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MONTANA UNEMPLOYMENT X COMPENSATION LAW

As Amended By
Chapter 245, Session Laws of 1947

AND

RULES AND REGULATIONS

Adopted in Conformity Therewith
Including Experience Rating Regulations

Also

Title V—Servicemen's Readjustment Act
Titles III and IX—Social Security Act
Subchapter "C" Internal Revenue Act

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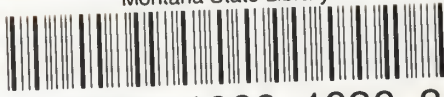


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MARCH 31, 1947

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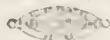
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BARCLAY CRAIGHEAD
Chairman

CARL ANDERSON
Commissioner

LOUIS G. DeNAYER
Commissioner

THE UNEMPLOYMENT COMPENSATION COMMISSION OF MONTANA

Helena, Montana
March 31, 1947

Pursuant to Section 11 (c) of the Montana Unemployment Compensation Law, the Commission has caused to be printed herewith the text of the law as amended to this date and of the Rules and Regulations which the Commission has adopted as provided for in the terms of the above law. Included is the text of certain portions of the Federal Laws concerned with the administration of unemployment compensation in Montana.

Amendments to the Montana law on this subject, made by the 1947 Legislative Assembly of Montana, are printed in bold-face type and enclosed in brackets for convenience of reference.

The unemployment compensation and employment service programs of all the states are conducted in co-operation with the Federal Government through the Federal Security Administration and the Department of Labor and under agreement with the Veterans Administration.

Copies of this compilation of the laws affecting unemployment compensation in Montana are available without charge upon application by any person therefor.

UNEMPLOYMENT COMPENSATION COMMISSION
OF MONTANA

By BARCLAY CRAIGHEAD,
Chairman and Executive Director.

CARL ANDERSON, Commissioner.

LOUIS G. DeNAYER, Commissioner.

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MONTANA UNEMPLOYMENT COMPENSATION LAW

[For convenience of the reader, Amendments of 1947 are enclosed in brackets, but brackets are not a part of the law].

An Act Providing for Unemployment Compensation; Creating a State Unemployment Compensation Commission; Establishing an Unemployment Compensation Fund and Providing for the Administration, Distribution and Investment Thereof; Providing for the Assessment and Collection of Contributions Upon Payrolls of Employers; Creating a State Employment Service and Providing an Appropriation Therefor; Providing Penalties for Violations. (As amended).

**Be it enacted by the Legislative Assembly of the
State of Montana:**

Section 1. This Act shall be known and may be cited as the "Unemployment Compensation Law."

DECLARATION OF STATE PUBLIC POLICY

Section 2. As a guide to the interpretation and application of this Act, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this State require the enactment of this measure under the police powers of the State for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

BENEFITS

Section 3. (a) Payments of Benefits. Thirty (30) months after the date when contributions first accrue under this act from the employer, benefits shall become payable from the fund to any individual, who thereafter is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act with respect to any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable on the basis of such wages under any provisions of this act. All benefits shall be paid through public employment offices in the State of Montana, or other agencies designated by the Commission, in accordance with such rules and regulations as the Commission may prescribe.

(b) Weekly Benefit Amount for Total Unemployment. Each eligible individual, who is totally unemployed (as defined in this act) in any week, shall be paid with respect to such week, benefits at the rate of **[four and one-half per centum (4½ %)]** of his total wages in employment for employers in the quarter of his base period wherein his earnings were highest, if a multiple of a dollar, or computed to the next **[highest]** multiple of a dollar, but not more than **[eighteen]** dollars **[(\$18.00)]** per week, nor less than **[seven]** dollars **[(\$7.00)]** per week.

(c) Wage Record. The Commission shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

(d) Duration of Benefits. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed sixteen (16) times his weekly benefit amount.

BENEFIT ELIGIBILITY CONDITIONS

Section 4. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe, except that the Commission may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) He has made a claim for benefits in accordance with the provisions of Section 6 (a) of this act.

(c) He is able to work and is available for work and is seeking work, provided, however, that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of two (2) weeks. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto;

(3) Unless it occurs within the benefit year of the claimant.

(4) Unless it occurs after benefits first could become payable to any individual under this act.

(e) He has within the base period earned wages for employment by employers equal to thirty (30) times his weekly benefit amount.

DISQUALIFICATION FOR BENEFITS

Section 5. An individual shall be disqualified for benefits—

(a) If he has left work voluntarily without good cause, if so found by the Commission, for a period of not less than one (1) or more than five (5) weeks (in addition to and immediately following the waiting period), as determined by the Commission according to the circumstances in each case.

(b) If he has been discharged for misconduct connected with his work, if so found by the Commission, for a period of not less than the one (1) nor more than the nine (9) weeks (in addition to and immediately following the waiting period), as determined by the Commission in each case according to the seriousness of the misconduct.

(c) If the Commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall continue for the week in which such failure occurred and for not less than the one (1) nor more than the five (5) weeks which immediately follow such week (in addition to the waiting period) as determined by the Commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (A) If position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the Commission finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this sub-section shall not apply if it is shown to the satisfaction of the Commission that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this sub-section, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the Commission, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the State of Montana or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for temporary or total disability under the workmen's compensation law of this, or, any state or under a similar law of the United States.

(3) Old age benefit payments under Title II of the Social Security Act, as amended, or benefits under the Federal Old Age and Survivors' Insurance Act, or similar payments under any act of Congress or State law.

(4) Benefits under the Railroad Unemployment Insurance Act or any State Unemployment Compensation Act or similar laws of any state or of the United States.

(f) During the school term or customary vacation periods within the school term, if claimant has left his most recent work for the purpose of attending an established educational institution, or if claimant is a student regularly attending an established educational institution.

(g) For any week wherein claimant leaves her most recent work to be married. Such disqualification shall continue until such time as subsequently to such week additional wage credits in employment for employers shall have been earned so as to be eligible for benefits under Section 4 of this act.

CLAIMS FOR BENEFITS

Section 6. (a) Filing. Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statement shall be supplied by the Commission to each employer without cost to him.

(b) Initial Determination. A representative designated by the Commission, and, hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal which shall make its decisions with respect thereto in accordance with the procedure prescribed in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of Section 5 (d) of this act, the deputy shall promptly transmit his full finding of fact with respect to that subsection to the Commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit

to the deputy a decision upon the issues involved under that subsection which shall be deemed the decision of the deputy. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after the delivery of such notification, or within seven calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final decision of the Commission, shall be paid only after such decision. Provided, that if an appeal tribunal affirms a decision of a deputy, or the Commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) Appeal Tribunals. To hear and decide disputed claims, the Commission shall appoint such impartial appeal tribunals as are necessary for the proper administration of this act, consisting in each case of either a salaried examiner selected in accordance with section 11 (d) of this act, or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers, and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the Commission and be paid a fee of not more than \$10.00 per day of active service on such tribunal plus necessary expense. No person shall participate on behalf of the Commission in any case in which he is an interested party. The Commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) Commission Review. The Commission may on its own motion affirm, modify, or set aside any decision of an appeal

tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof in accordance with the requirements in subsection (c) of this section. The Commission shall promptly notify the interested parties of its findings and decision.

(f) Procedure. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. The Commission shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel and amend all orders, findings and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsection (i) of this Section.

(g) Witness Fees. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Commission. Such fees shall be deemed a part of the expense of administering this act.

(h) Appeal to Courts. Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission as provided by this act. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Commission and has been designated by it for that purpose, or at the Commission's request, by the attorney general.

(i) Court Review. Within ten days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the

district court of the county in which said party resides against the Commission for the review of its decision, in which action any other party to the proceeding before the Commission shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the Commission or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. With its answer, the Commission shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The Commission may also in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such action, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the Workmen's Compensation law of this state. An appeal may be taken from the decision of the said district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the Commission shall so order.

CONTRIBUTIONS

Section 7. (a) Payment.

(1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages (as defined in Section 19 (p)) paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half ($\frac{1}{2}$) cent or more, in which case it shall be increased to one (1) cent.

(b) Rate of Contribution.

(1) Each employer shall pay contributions equal to the following percentages of wages (as defined in Section 19 (p) of this act) paid by him with respect to employment:

[(A)] One and eight-tenths (1.8) per centum with respect to employment during the calendar year 1937;

[(B)] Two and seven-tenths (2.7) per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941 and for each calendar year thereafter, **[except as herein provided in subsection (C) of this section.**

(C) Experience Rating.

The Commission shall for the calendar year 1947, and for each calendar year thereafter, classify employers in accordance with their actual contribution and unemployment experience and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year in order to reflect said experience and classification.

The Commission shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the Commission shall take account, each to an equal extent, of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) average annual percentage declines in taxable payrolls for the last three (3) preceding calendar years; (2) number of years the employer has paid contributions; and (3) chargebacks to the individual employer account upon the last employer basis. The computation date is hereby fixed as of the close of business on June 30th of the preceding calendar year.

The rates for the calendar year 1947, and thereafter, except as hereinafter provided, shall be so fixed that they would, if applied to all employers and their total taxable annual payrolls for the preceding calendar year have yielded total paid contributions equalling approximately one and eight-tenths (1.8) per centum of the total of all such annual payrolls.

The Commission shall determine the contribution rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be two and seven-tenths (2.7) per centum unless and until there have been five calendar years throughout which the employer has paid contributions at the rate of two and seven-tenths (2.7) per centum.

(2) No employer's contribution rate shall be less than one (1) per centum.

(3) No employer's contribution rate shall be more than two and seven-tenths (2.7) per centum.

(4) The classified contribution rates for the calendar year 1947, and thereafter, except as hereinafter provided, shall be: One (1) per centum, one and one-half (1.5) per centum, two (2.0) per centum, two and one-half (2.5) per centum, and two and seven-tenths (2.7) per centum.

(5) Rates as fixed by the Commission shall stand and be in effect unless and until the cash reserves in the Unemployment Compensation Trust Fund at any time in the future fall below Eighteen Million Dollars (\$18,000,000.00), then the contribution rate of all employers subject to this Act shall immediately return to a uniform rate of two and seven-tenths (2.7) per centum, and shall continue at the two and seven-tenths (2.7) per centum rate until cash reserves in the Unemployment Compensation Trust Fund exceed Twenty-Two Million Dollars (\$22,000,000.00).

(6) No employer's rate shall be fixed below two and seven-tenths (2.7) per centum whose average benefit payments charged as most recent employer have, in the three preceding calendar years, exceeded the average amount of his contributions for those years.

(7) The Commission shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquisition of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, benefit experience and ratings to the successor employing unit or units.

(8) The Commission shall by regulation provide for the proper notification of employers of the classification and rate of contributions applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the Commission for a redetermination or hearing thereon within thirty (30) days after receipt of such notice. The provisions of Section Six (6) of the Unemployment Compensation Law applicable to Appeals under Claims procedure shall apply with like purpose and effect, and be applicable to hearings and request for redetermination of classification and rates of contribution filed by employers hereunder.

(9) "Annual taxable pay roll" means the total of the four quarters of taxable pay rolls of an employer preceding the computation date as fixed herein.]

[(D)] Wages in Excess of Three Thousand Dollars.

Commencing January 1, 1941, the provisions of this act requiring the payment of contributions by employers subject to this act shall apply only to wages paid up to and including three thousand (\$3,000.00) dollars by an employer to an employee with respect to employment during any calendar year.

PERIOD, ELECTION AND TERMINATION OF EMPLOYER'S COVERAGE

Section 8. (a) Any employing unit which is or becomes an employer subject to this act within any calendar year, shall be subject to this act during the whole of such calendar year.

(b) Except as otherwise provided in subsection (c) of this section an employing unit shall cease to be an employer subject to this act only as of the first day of January, of any calendar year, only if it files with the Commission prior to the last day of February, of such year, a written application for termination of coverage, and the Commission finds that there were no twenty (20) different days, each day being in a different week within the preceding calendar year within which such employing unit employed one (1) or more individuals in an employment subject to this act, or the total wages payable for employment by said employer in the preceding calendar year did not exceed five hundred (\$500.00) dollars. For the purposes of this subsection, the two (2) or more employing units mentioned in paragraph (2) or (3) of Section 19 (i) shall be treated as a single employing unit.

(c) An employing unit not otherwise subject to this act, which files with the Commission its written election to become an employer subject hereto for not less than two (2) calendar years, shall, with the written approval of such election by the Commission become an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of January 1, of any calendar year, subsequent to such two (2) calendar years only if at least thirty (30) days prior to said first day of January it has filed with the Commission a written notice to that effect.

Any employing unit for which services that do not constitute employment as defined in this act, are performed may file with the Commission, a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this act for not less than two (2) calendar years. Upon the written approval of such election by the Commission, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first day of January such employing unit has filed with the Commission a written notice to that effect.

UNEMPLOYMENT COMPENSATION FUND

Section 9. (a) Establishment and Control. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment com-

pensation fund, which shall be administered by the Commission exclusively for the purposes of this act. This fund shall consist of (1) all contributions collected under this act; (2) interest earned upon any moneys in the fund; (3) any property or securities acquired through the use of moneys belonging to the fund; and (4) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

b Accounts and Deposit. The state treasurer shall be ex-officio the treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the Commission and shall issue his warrants upon it in accordance with such regulations as the Commission shall prescribe. He shall maintain within the fund three separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to Section 14 of this act may be paid from the clearing account upon warrants issued by the treasurer under the direction of the Commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the state may be deposited but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the Commission and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund.

(c) Withdrawals. Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the Commission. The Commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from

such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriation or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter signature of a member of the Commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) Disbursements of Funds If Federal Act Becomes Inoperative. If Title III or IX of the Federal Social Security Act is declared unconstitutional or in any way is inoperative, this act automatically becomes inoperative under the provisions of this act, and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment compensation fund and funds there held shall be immediately distributed, upon order of the Commission, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of one (1) year it shall be paid to the general fund of the State of Montana.

TRANSFER OF FUNDS TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

Section 1. Notwithstanding any requirements of Section 9 of the Montana Unemployment Compensation Law (Chapter 137 of the Twenty-fifth Legislative Assembly, 1937), the Unemployment Compensation Commission of Montana, shall, prior to July 1, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from the Unemployment Compensation Trust Fund for the State of Montana, established and maintained pursuant to Section 904 of the Federal Social Security Act, as amended, to the Railroad Unemployment Insurance account established and maintained pursuant to Section 10 of the Railroad Unemployment Insurance Act (52 Stat. 1094), an amount hereinafter referred to as the preliminary amount; and shall, prior to December 31, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from the Montana Unemployment Compensation Trust Fund to said Railroad Unemployment Insurance account an additional amount, hereinafter referred to as the liquidating amount. The preliminary amount shall consist of that proportion of the

balance in the unemployment compensation trust fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term employer is defined in Section 1 (a) of the Railroad Unemployment Insurance Act) and credited to the Montana Unemployment Compensation Trust Fund bears to all contributions theretofore collected under this act and credited to such fund. The liquidating amount shall consist of the total amount of contribution collected from "employers" (as the term employer is defined in Section 1 (a) of the Railroad Unemployment Insurance Act) pursuant to the provisions of this act during the period from July 1, 1939, to December 31, 1939, inclusive.

Section 2. The Unemployment Compensation Commission of Montana is hereby authorized to co-operate with and enter into agreements with the Railroad Retirement Board with respect to establishment, maintenance and use of Montana State Employment Service facilities, and to make available to the said Railroad Retirement Board the records of the Commission relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance act, together with employee wage records and such other data as the Railroad Retirement Board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act, (52 Stat. 1094); that any moneys received by the Unemployment Compensation Commission of Montana from the Railroad Retirement Board or any other governmental agency with respect to the establishment, maintenance and use of Montana State Employment Service facilities, shall be paid into and credited to the proper division of the Unemployment Compensation Administration Fund set up and established under Section 13 of the Montana Unemployment Compensation Act.

Section 3. This act shall be in full force and effect from and after its passage and approval.

UNEMPLOYMENT COMPENSATION COMMISSION

Section 10. (a) Organization. There is hereby created a Commission to be known as the Unemployment Compensation Commission of Montana. The Commission shall consist of three members who shall be appointed by the Governor on a non-partisan merit basis within sixty days after the passage of this act and after any vacancy occurs in its membership. Two of the members of the Commission shall serve on a per diem basis and shall be paid at the rate of ten (\$10.00) dollars per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one year for each of the said two members shall not exceed the sum of five hundred dollars (\$500.00). Each per diem member shall hold office for a term of six years, except that (1) a member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for

the remainder of such term; and (2) the terms of office of the member first taking office after the date of enactment of this act shall expire, as designated by the Governor at the time of appointment, one at the end of three years, the other at the end of six years. The third member of the Commission, who shall be designated as chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the Governor and shall be the executive director. During his term of membership on the Commission no member shall serve as an officer or committee member of any political party organization. The Governor may at any time, after notice and hearing, remove any commissioner for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(b) Divisions. The Commission shall establish two co-ordinate divisions: The Montana State Employment Service division created pursuant to Section 12 of this act, and the Unemployment Compensation division. Each division shall be responsible to the executive director for the discharge of its distinctive function. Each division shall be a separate administrative unit with respect to personnel, budget, and duties except insofar as the Commission may find that such separation is impracticable.

(c) Quorum. Any two commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the Commission.

ADMINISTRATION

Section 11. (a) Duties and Powers of Commission. It shall be the duty of the Commission to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. Not later than the 1st day of February of each year, the Commission shall submit to the Governor a report covering the administration and operation of this act during the preceding calendar year and shall make such recommendations for amendments to this act as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and

other relevant factors for the longest possible period. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the legislature, and make recommendations with respect thereto.

(b) Regulations and General and Special Rules. General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

(c) Publication. The Commission shall cause to be printed for distribution to the public the text of this act, the Commission's regulations and general and special rules, its annual reports to the Governor and any other material the Commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) Personnel. Subject to other provisions of this act, the Commission is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this act. The Commission may delegate to any such persons such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling money or signing checks hereunder. The Commission shall classify positions under this act and shall establish salary schedules and minimum personnel standards for the positions so classified. The Commission shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall be appointed or employed under this act. The Commission shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause.

(e) Records and Reports. Each employing unit shall keep true and accurate work records, containing such information as the Commission may prescribe. Such records shall be open to

inspection and shall be subject to being copied by the Commission or its authorized representative at any reasonable time and as often as may be necessary. The Commission and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the Commission deems necessary to the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall except to the extent necessary for the proper presentation of a claim be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the Commission or appeal tribunal shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the Commission who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisonment for not longer than 90 days, or both.

(f) Oaths and Witnesses. In the discharge of the duties imposed by this act, the chairman of an appeal tribunal and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this act.

(g) Subpoenas. In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the chairman of an appeal tribunal, the Commission or any duly authorized representative or any of them shall have jurisdiction to issue to such person an order requiring such person to appear before the chairman of an appeal tribunal, a commissioner, the Commission, or any duly authorized representative of any of them there to produce evidence if so ordered or there to give testimony touching the matters under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena of the Commission, the chairman of an appeal tribunal or any duly authorized representative of any of them shall be punished

by a fine of not more than \$200 or by imprisonment for not longer than sixty days, or both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(h) Protection Against Self-Incrimination. No person shall be excused from attending and testifying, or from producing books, papers, correspondence, memoranda, and other records before the Commission, the chairman of an appeal tribunal or any duly authorized representative of any of them or in obedience to the subpoena of the Commission or any member thereof or any duly authorized representative of the Commission in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(i) State-Federal Co-operation. In the administration of this act, the Commission shall co-operate to the fullest extent consistent with the provisions of this act, with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in the administration of this act.

Upon request therefor the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

(j) Reciprocal Benefit Arrangements. (1) The Commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this act, or under similar provisions of the unemployment compensation laws of such other states, shall be

deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Commission finds will be fair and reasonable as to all affected interests, and will not result in any substantial loss to the fund.

(2) The Commission is also authorized to enter into arrangements with the appropriate agencies of the other states or of the federal government (i) whereby wages or services, upon the basis of which an individual may become entitled to benefits under the Unemployment Compensation Law of another state or of the federal government, shall be deemed to be wages for employment by employers for benefit purposes; provided such other state agency or agency of the federal government has agreed to reimburse the Unemployment Compensation fund for such portion of benefits paid under this act upon the basis of such wages or services as the Commission finds will be fair and reasonable as to all affected interests; and (ii) whereby the Commission will reimburse other state or federal agencies charged with the administration of Unemployment Compensation laws, with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the Commission finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this act. The Commission is hereby authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the Unemployment Compensation fund, in accordance with arrangements made pursuant to this section.

Section 11-A. Acquisition of Property, etc. Subject to the approval of the state board of examiners the Commission may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the State of Montana. In the event the duties, or any part thereof, of the Commission shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the Commission, with the approval of the state board of examiners, may lease such equipment and real property to the federal government, or such agency, but the title thereto shall remain in the State of Montana.

11-B. The Commission shall afford reasonable cooperation with any government agency charged with war-effort or post-war planning responsibilities or with the administration of any system of unemployment allowances or unemployment assist-

ance or of any program designed to prevent or relieve unemployment. The Commission may make, and may cooperate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs; and the relative desirability of state (rather than national) action in any such field. The Commission shall fully cooperate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state unemployment compensation and employment security programs, or any part of the Social Security program.

EMPLOYMENT SERVICE

Section 12. (a) State Employment Service. The Commission shall create a division to be known as the Montana State Employment Service which division shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act, and for the purpose of performing such duties as are within the purview of the act of Congress entitled; "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes, " approved June 6, 1933 (48 Stat. 113; U.S.C., Title 29, Sec. 49. (c)), as amended. The said division shall be administered by a full time salaried director. The Commission shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of Congress, as amended, are hereby accepted by this state, in conformity with Section 4 of said act, and this state will observe and comply with the requirements thereof. The Unemployment Compensation Commission is hereby designated and constituted the agency of this state for the purpose of said act. The Commission is directed to appoint the personnel of the Montana State Employment Service. For the purpose of establishing and maintaining free public employment offices, the Commission is authorized to enter into agreements with any political subdivisions of this state or with any private, non-profit organization, and as a part of any such agreement the Commission may accept moneys, services, or quarters as a contribution to the employment service account.

UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND

Section 13. (a) Special Fund. There is hereby created in the State Treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited, appropriated, or paid into this fund are hereby appropriated and made available to the Commission. All moneys in the fund shall be expended solely for the purpose of defraying the costs of administration of this act and costs of administration of such other legislation as shall be specifically delegated to the Commission for administration by the Legislature. All moneys received and deposited in said fund for administrative expense from the Social Security Board, or its successor, pursuant to Section 302, Title III of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the Social Security Board for the proper and efficient administration of this act. The fund shall consist of (1) all moneys received from the Social Security Board, or its successor, pursuant to Section 302, Title III of the Social Security Act and (2) all moneys appropriated by the state from the General Fund for the purpose of administering this Act, all interest and penalties collected on past due contributions as provided by Section 14 (a) of this act; all moneys, trust funds, supplies, facilities or services furnished, deposited, paid and received from the United States of America, or any agency thereof, from this state or any of its agencies, from any other state or any of its agencies, from political subdivisions of the state, or any other source of administrative expense and purpose. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the Commission for the expenditure consistent with this act. The State Treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount to be fixed by the Commission and in a form prescribed by law or approved by the Attorney General. The premiums for such bond and the premiums for the bond given by the Treasurer of the unemployment compensation fund under Section 9 of this Act, shall be paid from the moneys in the Unemployment Compensation Administration Fund.

(b) Reimbursement of Fund. This State recognizes its obligation to replace, and hereby pledges the faith of this State that funds will be provided in the future, and applied to the replacement of any moneys received after July 1, 1941, from the Social Security Board under Title III of the Social Security Act, any unencumbered balances in the Unemployment Compensation Administration Fund as of that date, any moneys thereafter granted to this State pursuant to the provisions of the Wagner-Peyser

Act, and any moneys made available by the State or its political subdivisions and matched by such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, which the Social Security Board finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Social Security Board for the proper administration of this act. Such moneys shall be promptly supplied by moneys furnished by the State of Montana or any of its subdivisions for the use of the Unemployment Compensation Commission and used only for purposes approved by Social Security Board. The Commission shall, if necessary, promptly report to the Governor and the Governor to the Legislature, the amount required for such replacement. This subsection shall not be construed to relieve the State of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

COLLECTION OF CONTRIBUTIONS

Section 14. (a) Penalty and Interest on Past Due Contributions. Contributions unpaid on the date on which they are due and payable, as prescribed by the Commission, shall be subject to a penalty assessment of five per centum (5%) or Five dollars (\$5.00), whichever is the greater, and shall bear interest at the rate of one-half of one per centum ($\frac{1}{2}$ of 1%) per month from and after such date until payment plus accrued interest and penalty is received by the Commission. No interest shall be charged for fractional part of a month. Interest and penalty collected pursuant to this subsection shall be paid into the unemployment compensation administration fund. When failure to pay contributions in time and before delinquency was not caused by willful intent of the employer, and for good cause shown, the Commission may abate the penalty and interest, as a compromise offer of settlement, and payment of the tax liability.

(b) Collection. If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this Section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this State. Action for the collection of contributions due shall be brought within five (5) years after the due date of such contributions, otherwise to be barred as provided in Section 9030, Revised Codes of Montana, 1935.

(c) Priorities Under Legal Dissolutions or Distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than two hundred fifty (\$250.00) dollars to each claimant, earned within six (6) months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act, contributions then or thereafter due shall be entitled to priority of payment as a debt due the sovereign power as provided by the bankruptcy act of June 22, 1938, (Chap. 575-52 Stat. 840).

(d) Refunds. If not later than three (3) years after the date on which any contributions or interest thereon became due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the Commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the Commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the Commission shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the Commission's own initiative. In the event that this Act is not certified by the Social Security Board under Section 1603 of the Internal Revenue Code as amended, 1939, for any year, then and in that event, refunds shall be made of all contributions required under this Act from employers for that year.

(e) Lien for Payment. If any contributions payable by an employer under this act, or any portion thereof, is not paid within sixty (60) days after the same becomes due, the Commission may issue a certificate under its official seal, setting forth the amount of contributions due and interest accrued, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the employer owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and costs of executing the same and to return such certificates to the Commission and pay to the Commission the money collected by virtue thereof by a time to be therein specified, not more than ninety (90) days from the date of the certificate. The said sheriff shall, within five (5) days after the receipt of the certificate, file with the clerk of the district court of his county a copy thereof and thereupon the said clerk of the district court shall enter in the judgment docket, in the column for judgment debtors, the

name of the employer mentioned in the certificate, and in the appropriate columns the amount of contributions due and the penalties for which the certificate is issued and the date when such copy is filed and thereupon the amount of such certificate so docketed shall become a lien upon the title to and interest in real property or chattels real of the employer against whom it is filed in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for his services in executing the certificate, to be collected in the same manner.

(f) Summary or Jeopardy Assessment. If any employer fails to file a report or return as required under this Act, or the regulations of the Commission adopted thereunder, within the time specified, the Commission may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of contributions due and owing to the fund upon the basis of such information as the Commission may be able to obtain, and thereupon the same shall be collected the same as other reports and contributions due, with penalty and interest as provided in this Act. Upon making such summary or jeopardy assessment, the Commission shall immediately notify the employer in writing by personal service or by registered mail in the usual course, at the last known principal place of business operated by the said employer. Such assessment shall be final unless the employer shall protest such assessment in writing within fifteen (15) days after service of the notice, or within the same period of time the said employer shall file a correct, signed and sworn report and statement as provided by the Act and the regulations of the Commission. Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the Commission and notice thereof mailed to the employer. At such hearing, the facts ascertained by the Commission shall be conclusive and the Commission may upon the basis of such facts ascertained assess the amount due, modify, set aside or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this Act. A copy of the decision of the Commission and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final.

PROTECTION OF RIGHTS AND BENEFITS

Section 15. (a) Waiver of Rights Void. Any agreement by an individual to waive, release or communicate his rights to benefits or any other rights under this act shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contribu-

tion, required under this act from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by an individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not more than one thousand (\$1,000.00) dollars or be imprisoned for not more than six (6) months, or both.

(b) Limitation of Fees. No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the Commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the Commission or its representatives or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the Commission. Any person who violates any provision of this subsection shall, for each such offense, be fined not more than \$500, or imprisoned for not more than six months, or both.

(c) No Assignment of Benefits; Exemptions. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse, or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void.

(d) Any individual who is inducted or enlisted in the armed forces of the United States, shall not be considered as unemployed for the purposes of this act. Wage records accumulated by an individual who is inducted or enlisted in the armed forces of the United States, shall be maintained intact by the Commission during the period of time such individual is in service and for ninety (90) days thereafter. The "base period" for benefit purposes of such individual shall be fixed and determined as of the date of such enlistment or induction into service. The wage records of such individuals shall thereupon be segregated by the Commission and be maintained until the ending of such military service by the individual. Upon completing the period of service in the armed forces or discharge therefrom and upon fulfilling the eligibility requirements of Section 4 (a), (b), (c) and (d), the said individual shall be entitled to benefits under this act provided the wage credits earned by such individual prior to

military service are sufficient and within the "base period" as above set out to establish eligibility under Section 4 (e). If by an act of Congress or Federal legislation unemployment compensation benefits or similar benefits should be established for individuals in service, the Commission is hereby authorized and instructed to co-operate in such manner as may be deemed advisable and expedient in order to carry out the purpose of this act.

PENALTIES

Section 16. (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefits or other payment under this act, either for himself or for any other person, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than thirty days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than sixty days in the county jail or by both such fine and imprisonment, and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall wilfully violate any provision of this act or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than sixty days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the non-disclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such non-disclosure or misrepresentation was known or fraudulent) has received any sum as benefits

under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commission, either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the Commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this act for the collection of past due contributions.

REPRESENTATION IN COURT

Section 17. (a) In any civil action to enforce the provisions of this act the Commission and the State may be represented by any qualified attorney who is employed by the Commission and is designated by it for this purpose or at the Commission's request, by the attorney general.

(b) All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the State; or, at his request and under his direction, by the prosecuting attorney of any county in which the employer has a place of business or the violator resides.

NONLIABILITY OF STATE

Section 18. Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the State nor the Commission shall be liable for any amount in excess of such sums.

DEFINITIONS

Section 19. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual payroll," means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual payroll," means the average of the annual payrolls of an employer for the last three (3) or five (5) preceding calendar years, whichever average is higher.

(b) "Benefits," means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) "Base period," means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year," with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the date of filing of a valid claim by said individual, and thereafter the fifty-two-consecutive-week period beginning with the date of the next valid claim filed after the termination of his last preceding benefit year.

(e) "Calendar quarter," means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the Commission may by regulation prescribe.

(f) "Commission," means the Unemployment Compensation Commission established by this act.

(g) "Contributions," means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit," means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two (2) or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of an agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit which for some portion of a day in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or the preceding calendar year, has or had in employment, one or more individuals (irrespective of whether the same individuals are or were employed in each such day); or whose total annual pay roll within either the current or the preceding calendar year, exceeds the sum of five hundred (\$500.00) dollars.

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act), and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which, having become an employer under paragraph (1), (2) or (3) has not, under Section 8, ceased to be an employer subject to this act; or

(5) For the effective period of its election pursuant to Section 8 (c) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this Subsection means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this State if:

(A) The service is localized in this State; or

(B) The service is not localized in any state but some of the service is performed in this State and (I) the base of operation, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (II) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the Commission that:

- (A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and
- (B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
- (C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall not include:

- (A) Agricultural labor;
- (B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;
- (C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;
- (D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;
- (E) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or wild life and anglers clubs or associations, no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (F) Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions;
- (G) Service performed in the employ of any other state or its political subdivisions, or of the United States Government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the National Banking Law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks.

(H) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the Commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in Section 11 (b) of this act for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act.

(I) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(k) "Employment office," means a free public employment office, or branch thereof, operated by this State or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government, or its instrumentalities, as the Commission may approve.

(l) "Fund," means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

(m) "State," includes, in addition to the states of the United States of America, Alaska, Hawaii, the District of Columbia, and the Dominion of Canada.

(n) "Total unemployment":

(1) An individual shall be deemed "totally unemployed" in any week during which he performs no services and with respect to which no wages are payable to him.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.

(3) As used in this subsection the term "wages" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of seven (\$7.00) dollars in any one (1) week, and the term "services" shall not include that part of odd jobs or subsidiary work, or both, for which remuneration equal to or less than seven (\$7.00) dollars per week is payable,

or for one (1) day's work not exceeding eight (8) hours, whichever is greater.

(o) "Unemployment Compensation Administration Fund," means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

(p) "Wages," means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the Commission. Commencing January 1, 1941, "wages," means all remuneration up to and including three thousand (\$3,000.00) dollars in a calendar year paid for personal services, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of all remuneration paid in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the Commission.

Wage records kept by the Commission for the purposes of this act prior to January 1, 1941, shall be kept on the basis of wages payable, and wage records kept by the Commission for the purposes of this act after January 1, 1941, shall be kept on the basis of wages paid.

Provided, however, that the term "wages" shall not include—

(1) The amount of any payment made to, or on behalf of, an employee by an employer on account of:

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical and hospitalization expenses in connection with sickness or accident disability, or

(D) Death.

(E) Services performed for a fraternal benefit society, lodge, order, service club or association having a total annual pay roll of less than five hundred dollars (\$500.00) in any calendar year.

(q) "Week," means such period of seven (7) consecutive calendar days, as the Commission may by regulation prescribe.

(r) "Weekly benefit amount." An individual's "weekly benefit amount," means the amount of benefits he would be entitled to receive for one (1) week of total unemployment.

SAVING CLAUSE

Section 20. The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall

be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this act at any time.

Section 21. If any section, subsection, sentence, clause or a phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared unconstitutional, the same being necessary to the welfare of the State of Montana, and the political subdivisions thereof by reason of the existence of an extraordinary emergency.

Section 22. Act to Be in Effect. If Title III or Title IX of the "Federal Social Security Act" is declared unconstitutional, or in any way becomes inoperative, then this Act shall terminate and cease and have no force and effect as of the date when said title or titles of said act is declared unconstitutional, or becomes inoperative.

Section 23. Approval by Social Security Board. If the Federal Social Security Board shall fail to approve this Act, the same shall immediately terminate and have no force and effect.

Section 24. Effective Date. The legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health and safety; that an emergency exists, and that this act, therefore, shall take effect and be in force from and after its passage and approval.

Chapter 137, Session Laws of Montana, 1937.
Approved March 16, 1937.

Chapter 137, Session Laws of Montana, 1939
Approved March 9, 1939.

Chapter 164, Session Laws of Montana, 1941.
Approved March 17, 1941.

Chapter 233, Session Laws of Montana, 1943.
Approved March 16, 1943.

Chapter 190, Session Laws of Montana, 1945.
Approved March 7, 1945.

Chapter 245, Session Laws of Montana, 1947
Approved March 8, 1947.

[This Act shall be in full force and effect from and after the date of its passage and approval and shall apply as to benefit payments under Section 3 of this Act as of March 31st, 1947, and as to contribution payment and rates under Section 7 of this Act, for the calendar year 1947, as of January 1st, of said year.]

RULES AND REGULATIONS

RULE 1. CASH VALUE OF CERTAIN REMUNERATIONS

(a) If board, lodging, or any other payment in kind, considered as payment for services performed by a worker, is in addition to or in lieu of "rather than a deduction from" money wages, the Commission shall determine or approve the cash value of such board and lodging in individual cases for the purpose of computing contributions due under the law.

(b) Where a cash value for such board and lodging furnished a worker is agreed upon in any contract of hire, the amount so agreed upon shall, if more than the rates prescribed herein, be deemed the value of such board and lodging. Until and unless in a given case a rate for board and lodging is determined by the Commission, board and lodging furnished in addition to money wages shall be deemed to have not less than the following value:

Full board and room, weekly	\$7.50
Meals, per week	5.00
Meals, per day75
Meals, per meal25
Lodging, per week	2.50

RULE 2. GRATUITIES

If gratuities constitute partial or entire payment for service performed by a worker, the employer shall include as wages the amount of gratuities or tips actually received by each worker, or shall make reasonable valuation of the average remuneration from that source, showing in detail on a statement attached to the first contribution report for 1937 or the employer's first contribution report thereafter and thereafter as requested, the basis for such valuation.

The requirements of the law and the instructions of the Commission relating to the reporting of wages are not to be construed as requiring, or permitting employers to require, workers to report to their employers the amount of their tips. The reporting of the exact amount of tips received by workers is to be made only with the voluntary consent of the workers.

Regulations on Readjustment Allowances, Interstate Claimant Benefits, and Appeals

REGULATION A-1

Withdrawals from Trust Fund

The Chairman and Executive Director of the Commission, or such other employee of the Commission as the Commission shall by resolution designate, shall have the power and authority to requisition necessary amounts to pay benefits under the law from the Unemployment Compensation Trust Fund on deposit with the Secretary of the Treasury of the United States of America in accordance with Section 904 (f) of the Social Security Act.

Such requisition shall be in even thousands of dollars and shall be countersigned by the State Treasurer, as Ex-Officio Treasurer of the Fund. Specific directions shall be stated in such requisition as to the form of remittance desired and specific Bank and account to which payment shall be made. Requisition of funds may be made as often as required in maintaining a Benefit Fund for payment of benefit checks issued pursuant to the law.

REGULATION A-2

Servicemen's Readjustment Act of 1944 (G. I. Bill)

1. Definitions:

(a) Partially Unemployed Servicemen:—

A partially unemployed serviceman is one who qualifies for Readjustment Allowances under the provisions of the Servicemen's Readjustment Act of 1944, Supra, and who:—

1. Earned less than \$23.00 in full-time employment during a week of employment;
2. Was regularly employed in full-time employment;
3. Worked less than his normal full-time hours for such regular employer because of lack of work.

(b) Week of Partial Unemployment:—

With respect to a partially unemployed serviceman whose wages are paid on a weekly basis, a week of partial unemployment shall consist of his pay period week; with respect to a partially unemployed serviceman whose wages are not paid on a weekly basis, a week of partial unemployment shall consist of a calendar week, provided that the Commission may, upon

its own initiative, or application, prescribe as to any serviceman or group of servicemen such other seven consecutive day period as it may find appropriate under the circumstances.

(c) The term "Serviceman" shall be construed to mean both men and women, who have served in the armed forces of the United States of America.

2. Employer Responsibility in the Initiation of a First Claim for Partial Benefits in a Benefit Period:

(a) Immediately after the termination of any week in which an employer has furnished to a returned serviceman in his employ less than four full days' work, or the time or dollar earnings equivalent thereof; or where the total earnings during such week were less than \$23.00; upon request of the worker, the employer shall furnish such worker during such week a statement of the amount of wages earned, and that the loss of earnings during such week was due to lack of work.

(b) Upon receipt of such statement of partial unemployment the worker shall be entitled to file a claim for such week as partially unemployed, and shall attach to such claim form the statement of low earnings furnished by the employer.

3. Employer to Furnish Evidence of Partial Unemployment:

After an employer has been notified of the partial earnings limit and benefit period of any serviceman in his employ, such employer, unless otherwise notified, shall immediately after the termination of each week (as described in Paragraph 2 (a) hereof) occurring within the benefit period of such worker, furnish to such worker a statement of the days, hours and total earnings during such week.

The information contained in such statement of low earnings shall show:—

- (a) The name and Montana Unemployment Compensation Commission Identification Number of Employer, if any;
- (b) The name and Social Security Number of the worker;
- (c) The beginning and ending date of such week;
- (d) The amount of wages earned in such week;
- (e) The following certification (individual or rubber stamped) "I certify that the above amount represents reduced earning in a week of less than full time work because of lack of work."
- (f) A signature (actual or facsimile) by the employer to the above certification, or other positive identification of the authority supplying the evidence.

4. Registration and Filing of Claims for Partial Unemployment:

(a) A claim for benefits filed by an individual in person at any local employment office in Montana or mailed to the Commission, supported by a low earnings statement from employer shall constitute such individual's notice of unemployment, registration for work and claim for benefits, with respect to each such week of partial unemployment covered by the claim. Such claim shall not be valid if filed 35 or more days after the close of the week of partial unemployment with respect to which the claim is filed.

5. Extended Period for Registration and Filing of Claims for Good Cause:

Notwithstanding the Provisions of Paragraph 4, if the Commission finds that the failure of any individual to register and file a claim for partial unemployment benefits within the time set forth in Paragraph 4 was due to failure on the part of the employer to comply with the Provisions of this Regulation, or by failure by this Commission to discharge its responsibilities promptly in connection with such partial unemployment, the period during which such claim may be filed shall be extended by this Commission to a date which shall not be less than 30 days after the individual has received appropriate notice of his potential rights to benefits and his earnings during the period of such partial unemployment.

6. Employer Records in Connection with Partial Unemployment of Servicemen:

In addition to the requirements set forth in Regulation C-5, each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine with respect to an Ex-Serviceman in his employ who may be eligible for partial benefits:

- (a) Wages earned by weeks, as described in Paragraph 1.
- (b) Whether any week was in fact a week of less than full time work.
- (c) Time lost, if any, by each such individual, due to his unavailability for work.

REGULATION A-3

Regulation for the Payment of Benefits to Interstate Claimants

1. The following regulation shall govern the Unemployment Compensation Commission of Montana in its administrative co-

operation with other States adopting a similar regulation for the payment of benefits to interstate claimants.

2. Definitions.

As used in this regulation, unless the context clearly requires otherwise:

(a) "Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the State (or States) in which benefit credits have been accumulated.

(b) "Interstate Claimant" means an individual who claims benefits under the Unemployment Compensation Law of one or more liable states. The term "Interstate Claimant" shall not include any individual who, immediately prior to the commencement of his unemployment, habitually commuted from his residence in this state to his work in another state.

(c) "State" includes Alaska, Hawaii and the District of Columbia.

(d) "Agent State" means any State in which an individual files a claim for benefits from another State or States.

(e) "Liable State" means any State against which an individual files, through another State, a claim for benefits.

(f) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment compensation law of any State.

(g) "Week of unemployment" includes any week of unemployment as defined in the law of the liable State from which benefits with respect to such week are claimed, except that no week of less than his customary full time work and reduced earnings for an individual attached to his regular employer shall be considered a week of unemployment for purposes of this regulation.

3. Registration for Work.

(a) Each interstate claimant shall be registered as unemployed and available for work, through any public employment office in the agent state in accordance with the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(b) Each agent state shall duly report to the liable state in question whether each interstate claimant has been fully registered for work.

4. Exhaustion of Credits in Agent State and Order of Succession of Liable States.

(a) No benefits shall be payable on an interstate claim unless the claimant shall have exhausted, or otherwise terminated, his benefit rights, if any, in the State in which he files his claim.

(b) In case an interstate claimant is qualified for benefits under the unemployment compensation laws of two or more states other than the one in which he files his claim, his claims for benefits shall be forwarded to such states successively, and his benefits shall be paid by such states successively, in the same chronological order as the earliest dates on which the worker earned benefit credits currently available to him under the respective laws of such states.

(c) After an interstate claimant has (in accordance with the standard order of succession above set forth) been determined to be eligible for benefits in a given state, his agent state shall thenceforth take his claims for benefits solely against such state unless and until his available benefit credits are exhausted or otherwise terminated in such state, at which time the foregoing standard order of succession shall again apply. If an intrastate claimant moves to another state in which he is qualified for benefits he shall continue his claim as an interstate claim against the state from which he moved until his benefits there are exhausted or otherwise terminated prior to his claiming benefits from the state to which he has moved.

(d) For the purpose of this regulation benefit credits shall be deemed to be unavailable whenever an individual is not entitled to receive benefits based thereon by reason of seasonal restrictions upon the payment of benefits or a disqualification for an indefinite period or for the entire period in which benefits would otherwise be payable on the basis of such credits or by reason of cancellation of such credits. Benefit credits shall be deemed to be available during any fixed period of temporary disqualification if in the absence of further disqualification benefits will thereafter be payable on the basis of such credits.

5. Claim for Benefits.

(a) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(b) Claims shall be filed weekly in local employment offices, or by mail in accordance with agent state regulations for

intrastate mailed claims, or in accordance with the schedule provided by itinerant service. The liable state shall under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. After a lapse in reporting of more than 14 days from the last report day, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

6. Determination of Claims.

(a) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

7. Appellate Procedure.

(a) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims. An interstate claimant may, with the permission of the liable state, have included in the record of the hearing, his statement, made under oath or affirmation before an appropriate officer or officers in the agent state, concerning matters involved in the appeal.

(b) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by a qualified officer of the agent state.

REGULATION A-4

Appeal Tribunal

1. The appeal tribunal shall consist of a salaried examiner and the Chief Field Auditor of the Unemployment Compensation Commission of Montana is hereby designated as the examiner and appeal tribunal, provided, however, that the Commission may by special appointment appoint other examiners and appeal tribunals consisting in some instances of a single individual or a body composed of a salaried examiner and two disinterested persons, one representing the employers and one representing the employees, to hear special cases on appeal.

REGULATION A-5

Appeals

A. Appeals to Appeal Tribunal (First Appeal Stage):

1. Presentation of Appeal:

(a) A party appealing from a decision or order of a deputy shall file with the Commission within the time provided by law, at the office where the claim was filed, a Notice of Appeal and Request for Hearing (Form 214), setting forth the information required thereby.

(b) An employer appealing from a determination of rate and assignment of Group under the experience rating provisions of the law shall file with the Commission within the time provided by the law, a Notice of Appeal and Request for Hearing (Form U. C. 46) setting forth the grounds of objections and the information required thereby.

(c) Upon the scheduling of a hearing on an appeal notices of hearing shall be mailed to claimants and the parties interested in the decision or order of the deputy which is being appealed at least five days before the date of hearing, specifying the place and time of hearing;

2. Disqualification of Members of Appeal Tribunals.

No examiner shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of the examiner may be heard and decided by the Chairman of the Commission.

3. Hearing of Appeal.

(a) All hearings shall be conducted informally, and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and passed upon. The claimant and any other party to an appeal before an appeal tribunal may present such evidence as may be pertinent. Where a party appears in person, the members of an appeal tribunal shall examine such party and his witnesses, if any, and may cross-examine the witnesses of any opposing parties. The appeal tribunal, with or without notice to any of the parties, may take such additional evidence as it deems necessary.

(b) The parties to an appeal, with the consent of the appeal tribunal, may stipulate the facts involved in writing. The appeal tribunal may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence as it deems necessary to enable it to determine the appeal.

(c) The Examiner, during the conduct of any hearing, may indicate to the reporter portions of the evidence which are to

be transcribed to aid in preparing findings of fact and decision.

4. Adjournments of Hearings.

(a) The Examiner shall use his best judgment as to when adjournments of a hearing shall be granted in order to secure all the evidence that is necessary and to be fair to the parties.

(b) If any party fails to appear at the hearing, the Examiner shall proceed to make his decision on the appeal, unless it appears to the satisfaction of the Examiner that there is good cause for further adjournment.

(5) The Determination of Appeals.

(a) Following the conclusion of hearing of an appeal, the Examiner shall within ten days announce his findings of fact and decision with respect to the appeal. The decision shall be in writing and shall be signed by the Examiner. The Examiner shall set forth his finding of fact with respect to the matter appealed, his decision, and the reasons therefor.

(b) Copies of all decisions and the reasons therefor shall be mailed by the appeal tribunal to the claimant, to all other parties to the appeal, and to the deputy.

B. Appeals to the Commission (Second Appeal Stage);

1. The Presentation of an Appeal to the Commission.

(a) A party appealing from a decision of an appeal tribunal, or a deputy appealing from the decision of an appeal tribunal which overruled or modified his decision, shall file with the Commission, at the office where the claim was filed, a notice of appeal to the Commission on Form 214, or form UC46 as the case may be, setting forth the information required thereby. Copies of the notice of appeal shall be mailed by the Commission to the parties interested in the decision of the appeal tribunal which is being appealed.

(b) Upon the scheduling of a hearing on an appeal, notices of hearing shall be mailed at least ten days before the date of hearing, specifying the place and time of hearing, to the claimant and to all other parties interested in the decision of the appeal tribunal which is being appealed.

2. Hearing of Appeals.

(a) Except as provided in Paragraph B-5 of this regulation, for the hearing of appeals removed to the Commission from an appeal tribunal, all appeals to the Commission may be heard upon the evidence in the record made before the appeal tribunal; or the Commission, to enable it to determine an appeal, may direct the taking of additional evidence before it.

(b) In the hearing of an appeal on the records, the Commission may limit the parties to oral argument, or the filing of

written argument, or both. If, in the discretion of the Commission, additional evidence is necessary to enable it to determine the appeal, the parties shall be notified by the Commission, as provided in Section 1 (b) of this regulation, of the time and place such evidence shall be taken. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issue on which the Commission directed the taking of evidence.

(c) The Commission, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of such additional evidence as the Commission may deem necessary. Such testimony shall be taken by the appeal tribunal in the manner prescribed for the conduct of hearings on appeals before appeals tribunals. Upon the completion of the taking of evidence by an appeal tribunal pursuant to a direction of the Commission, the claim or issue involved in such claim shall be returned to the Commission for its decision thereon.

3. The Hearing of Appeals by the Commission on Its Own Motion.

(a) Within ten days following a decision by an appeal tribunal, and in the absence of the filing by any of the parties to the decision of the appeal tribunal, of a notice of appeal, the Commission, on its own motion, may order the parties to appear before it for hearing on the claim or any issue involved therein.

(b) Such hearing shall be held only after seven days prior notice to the parties to the decision of the appeal tribunal, and shall be heard in the manner prescribed in Section A-3 of this regulation, for the hearing of appeals by the Commission.

4. The Hearing of Appeals by the Commission on Cases Ordered Removed to It From an Appeal Tribunal.

The proceeding on any claim for an appeal tribunal ordered by the Commission to be removed to it shall be presented, heard and decided by the Commission in the manner prescribed in Section A-1, 2, 3 and 4, of this regulation for the hearing of claims before appeal tribunals.

5. The Determination of Appeals.

(a) Following the conclusion of a hearing on an appeal, the Commission shall within ten days announce its findings of fact and decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Commission who heard the appeal. It shall set forth the findings of fact of the Commission with respect to the matters appealed, its decision, and the reasons therefor.

(b) If a decision of the Commission is not unanimous, the decision of the majority shall control. The minority may file a

dissent from such decision, setting forth the reasons why it fails to agree with the majority.

(c) Copies of all decisions and the reasons therefor shall be mailed by the Commission to the claimant and to the other parties to the appeal before the Commission.

C. General Regulations for Both Appeal Stages.

1. Issuance of Subpoenas.

(a) Subpoenas to compel the attendance of witnesses and the production of records for any hearing of an appeal, unless directed to issue by a member of the Commission, or the Examiner of an appeal tribunal, shall be issued by the Commission only upon a showing of the necessity therefor by the party applying for the issuance of the subpoenas.

(b) Witnesses subpoenaed for any hearing before an appeal tribunal or the Commission or called as witness and testifying at such hearing shall be paid witness and mileage fees by the Commission in accordance with the following schedule:

For attending \$1.50 per day; for each mile actually and necessarily traveled in going to and returning from place of hearing, 5 cents per mile.

2. Orders for Supplying Information from the Records of the Commission.

(a) Orders for supplying information from the records of the Commission to a claimant or his representative to the extent necessary for the proper presentation of a claim shall issue only upon application therefor setting forth the information required thereby. All applications for information from the records of the Commission shall state, as nearly as possible, the nature of the information desired.

(b) In all cases where an application to supply a claimant or his representative with information from the records of the Commission is granted, the party shall be furnished with a copy of such information.

3. Representation Before Appeal Tribunals and the Commission.

(a) Any individual may appear for himself in any proceeding before any appeal tribunal and the Commission. Any partnership may be represented by any of its members or a duly authorized representative. Any corporation or association may be represented by an officer or a duly authorized representative.

(b) Any party may appear by an attorney at law admitted to practice before any appeal tribunal or the Commission, or by any other person who is qualified to represent others.

(c) Attorneys at law who are admitted to practice before the highest court of this State, or the highest court of any State or territory of the United States, may practice before any appeal tribunal and the Commission.

(d) The Commission, in its discretion, may refuse to allow any person to represent others in any proceeding before it whom it finds guilty of unethical conduct, or who intentionally and repeatedly fails to observe the provisions of the Montana Unemployment Compensation Law, or the regulations and instructions of the Commission.

4. Inspection of Decisions of Appeal Tribunals and the Commission.

Copies of all decisions of appeal tribunals and the Commission shall be kept on file at the office of the Unemployment Compensation Commission of Montana at Helena, Montana. Such decisions shall be open for inspection, but without, in any manner, revealing the names of any of the parties or witnesses involved.

Regulations on Benefits and Claims

REGULATION B-1

The Benefits of claimants shall be determined under Sections 3 (b) and (c) and 4 (c) of the Law in the following manner:

The weekly benefit amount under Section 3 (b) and the claimant's qualifying earnings under Section 4 (e) shall be based upon the wages, as defined in Section 19 (p) of the law, paid to him for employment by employers during his base period; but for the purposes of computing such weekly benefit amount and qualifying earnings, such wages shall be credited to the calendar quarter in which they were earned.

REGULATION B-2

1. Where wage records for a worker have not been received by the Commission from an employer, and the subjectivity of an employer has not been determined by the Commission, the unemployed worker shall be entitled to support his claim for benefits by affidavits from two disinterested persons acquainted with the facts, in order to establish the subjectivity of the employer under the law and the wage earnings of the claimant in employment for an employer in the base period of such claimant. Such affidavits and other pertinent data may be used by the Commission as a basis for the determination of the benefit rights of such unemployed worker.

REGULATION B-3

Separations

1. Whenever any worker is separated from his employment, the employer shall within twenty-four hours after such separation send to the Unemployment Compensation Commission, Box 1727, Helena, Montana, the original Separation Notice (Form 200) and deliver to the worker, or mail to his last known address, if delivery is impossible or impracticable, the duplicate copy thereof. The Separation Notice shall set forth:

- (a) The worker's full name;
- (b) His Social Security number;
- (c) The nature of the work performed by said individual;
- (d) The last day worked;
- (e) The reason for separation;
- (f) Whether such worker is receiving or has received wages in lieu of notice, and if so, the amount thereof and the period for which such wages are payable;
- (g) Such other information as required by form.

2. Any employer who fails to furnish a Separation Notice or to indicate upon the Separation Notice his claim that such individual is disqualified for benefits under any of the provisions of Section 5 of this act, shall be barred from subsequently claiming such disqualifications unless the Commission for reasons found to constitute good cause, shall relieve such employer of the default.

3. Upon request by the Commission for a separation notice covering any worker separated from his work for any employer or employing unit, such employing unit or employer shall, within 48 hours following the receipt of such request, completely fill out such notice and return it to the address specified in the notice.

REGULATION B-4

Mass Separations

1. The term "Mass Separation" means a separation (permanently or for an indefinite period of time, or for an expected duration of seven or more days) at or about the same time and for the same reason, of twenty-five or more workers employed in a single establishment.

2. In lieu of furnishing workers, separated from their employment in a mass separation, with separation notices as provided for in Regulation B-3, (Form 200), an employer may file

with the Montana State Employment Service office nearest such employer's place of business a mass separation report in the form of a letter over the signature of employer setting forth substantially such information as is required thereby. Such mass separation report should be filed as soon as the employer has reason to believe a mass separation will take place, but shall be filed not later than twenty-four hours after such separation.

3. In cases of total unemployment due to a strike, lockout, or other labor dispute, the employer shall file with the Montana State Employment Service office nearest his place of business, a mass separation notice in the form of a letter over the signature of the employer, setting forth the existence of such dispute and the approximate number of workers affected and such other information as is required to give the Commission notice of such labor dispute and nature thereof.

4. Upon request by the Unemployment Compensation Commission of Montana, such employer shall furnish to the Commission the names of the workers ordinarily attached to the department or establishment where unemployment is caused by a strike, lockout, or other labor dispute.

REGULATION B-5

Claims for Benefits

Except as otherwise provided for special circumstances, on and after July 1, 1939, any individual claiming benefits under the Montana Unemployment Compensation Law for unemployment shall proceed in the following manner:

1. Any individual claiming benefits or waiting period credits for such unemployment under the act shall report in person at the Montana State Employment Service office most accessible to him, and shall there register for work and file a claim for benefits. Thereafter such individual must report weekly in the manner and at the time designated by the Commission. The claim for benefits shall be filed on Form 202, which shall constitute both the registration for work and the claim for benefits or waiting period credits, and shall set forth the following:

- (a) That he claims benefits;
- (b) That he is able to work and available for work;
- (c) That he registers for work;
- (d) Such other information as is required by the form:

Provided, however, that if any individual was last employed or resides in any locality wherein provision is made for an itinerant Montana State Employment service, such individual may register and file a claim for benefits (as provided above) in person with such itinerant employment service;

And provided further, that if reporting in person either to an office of, or to the itinerant representative of, the Montana State Employment Service is, in the opinion of the Commission impractical, the filing of claims by mail with the Montana Unemployment Compensation Commission office at Helena, Montana, will be permitted.

2. In order to maintain continuing eligibility for benefits with respect to any weeks of such unemployment during any continuous period of unemployment such individual shall continue to register and report in person or by mail, where registration and reporting by mail is permitted, on the dates specified for reporting to such service, and file continued claims for benefits. No continued claim for benefits shall be allowed until the claimant can furnish to the Commission a signed continued claim for benefits on Form 203 on which he shall set forth the following:

- (a) That he continues his claim for benefits.
- (b) That he is unemployed.
- (c) That since he last registered for work he performed no work and earned no wages, except as reported herein.
- (d) That he is able to work and available for work.
- (e) That he registers for work.
- (f) Such other information as may be required upon such form.

3. Where a continuous period of unemployment is terminated or interrupted by re-employment or by any other event which would prevent continuing eligibility, the claimant, after such termination or interruption, in order to receive benefits for any week of unemployment for which he was in all respects eligible for benefits, shall furnish to the Commission a signed claim for benefits for such week on the form prescribed by the Commission (204), setting forth the following:

- (a) That he claims benefits for the specified week;
- (b) That during that week he was totally unemployed, or earned the wages specified in the claim;
- (c) Such other information as may be required by the form.

4. Registration for benefit or waiting period weeks shall be effective as of the day, subsequent to his separation from work, on which an individual presents himself in person at a Montana State Employment Service office and registers for work and files claim for benefits in accordance with paragraph 1 of this regulation: Provided, that any disqualification, occurring subsequent to any waiting period week or compensable week shall not prejudice benefit rights accrued for such week or weeks.

Any registration at such employment office within a period of seven days following an individual's first day of his unemployment shall be deemed effective as of the first day of his unemployment, if there shall be presented to the satisfaction of the Commission sufficient grounds to justify or excuse the delay, except where the first day of an individual's unemployment occurs on a Sunday, in which event the registration shall be effective on the first day following each Sunday.

5. Registration for benefit or waiting period weeks by individuals located in places served only by an itinerant service of the Montana State Employment Service shall be effective as of the first day of the individual's unemployment if such individual registers for work with such itinerant service at the first visit thereof following the date of the separation of such individual from his employment, or at the second visit, provided good cause is shown to the satisfaction of the Commission for failure to so register at such first visit.

6. Registration for benefit or waiting period weeks by individuals located in places where reporting in person, either to a Montana State Employment Service office or to the itinerant employment service, is impractical, shall be effective as of the first day of unemployment, if such individual mails his written request for registration and benefit claim forms to the nearest regular Montana State Employment Service office within seven days of said first day of unemployment, and if such individual completes and mails such forms to the Unemployment Compensation Commission, Box 1727, Helena, Montana, not later than the day following the date of receipt of such requested forms. If such individual fails to complete his registration within the period above provided, by mailing his completed registration and claim forms within the day following receipt thereof, such individual's registration for benefits or waiting period weeks shall be effective as of the date of mailing of such completed registration and claim forms; provided, however, that if good cause be shown to the satisfaction of the Commission for such delay, the Commission may excuse such delay in mailing of completed forms and permit such registration to be effective as of the first day of such individual's unemployment.

REGULATION B-6

Week Defined

1. The term "week" means a period of seven consecutive days, commencing Sunday and ending Saturday, except that:

A week of total unemployment shall consist of the seven consecutive day period beginning with the day of total unemployment on which claimant registers in person at an office of the Montana State Employment Service, except that the Commission may accept any registration at such employment office

within a period of seven days following an individual's first day of unemployment, if there shall be presented to the satisfaction of the Commission sufficient grounds to justify or excuse the delay.

Provided, that a week of total unemployment of an individual located in an area served only by the itinerant service of the Montana State Employment Service shall consist of the seven consecutive day period beginning with the first day of such individual's total unemployment, if such individual registers in person with such itinerant service at the first visit of such itinerant service next following the commencement of his total unemployment, or at the second visit, provided good cause is shown to the satisfaction of the Commission for failure to so register at such first visit.

. And provided, that a week of total unemployment of an individual filing a claim by mail shall consist of seven consecutive day periods beginning with the first day of unemployment, if such individual mails his written request for registration and benefit claim forms to the nearest Montana State Employment Service office within seven days of said first day of unemployment, and if such individual completes and mails such forms to the Unemployment Compensation Commission, Box 1727, Helena, Montana, not later than the day next following the date of receipt of such requested forms; except that if good cause for delay is shown to the satisfaction of the Commission, the Commission may excuse such delay in mailing of completed forms and permit such registration to be effective as of the first day of such individual's unemployment as first above provided.

A week of total unemployment of any individual affected by a mass separation, or by a strike, lockout, or other labor dispute with respect to which arrangements are made for group reporting by the employer, as provided in Regulation B-4, shall consist of the seven consecutive day period beginning with the first day of his total unemployment provided that notice thereof is filed by the individual within seven days next following his first day of total unemployment or at the end of his period of unemployment if the duration thereof is less than seven days.

Week of Disqualification. With respect to acts and periods of disqualification under Section 5 of the act which occur or commence before any week of another unemployment, as defined in this regulation, has commenced, "week" means the calendar week in which the disqualifying act or event occurs.

REGULATION B-7

Valid Claim

1. "Valid Claim" means a claim for benefits filed by an individual worker, or registering for work and filing claim for

benefits or waiting period week (Form 202) who has earned the qualifying amount of wages in his base period so as to be eligible for benefits under Section 3 and Section 4 of the Law, whether or not he is eligible in terms of the disqualification provisions of Section 5 of the Montana Unemployment Compensation law.

REGULATION B-8

Interested Parties

1. Only the claimant and such employing unit, as shall have submitted to the Commission a Separation Notice (Form 200), under Regulation B-3, specifying grounds for objection or disqualification for such claimant's rights to benefits shall be deemed to be "interested parties" within the meaning of Section 6 (b) of this act.

2. Any other employer, for whom claimant may have rendered services within his base period, may, upon application to the Commission, be permitted to intervene as an interested party to any claim for benefits at any stage of the proceedings for the determination of the validity of such claim, upon a showing to the satisfaction of the Commission that his interests may be immediately and substantially affected by the allowance of the claim.

REGULATION B-9

Initial Determinations

1. Each local manager or other individual in charge of a Montana State Employment Service office and each Claims Examiner of the Unemployment Compensation Commission of Montana shall be deemed to be a deputy and is hereby designated a representative of the Commission to accept and examine claims for benefits.

2. Upon receiving a claim for benefits, the local office shall forward to the Central Office of the Unemployment Compensation Commission of Montana the original of the claim, and shall request from the Central Office a statement as to the benefit rights of the claimant. Upon receipt from the Central Office of this statement as to the claimant's benefit amount, duration of benefits, wage records, and other data pertinent to the claimant's benefit rights, a deputy in the local office shall consult with the claimant and obtain his approval or disapproval of the statement. In the event a claimant disapproves this statement, the deputy in the local office may re-transmit to the Central Office a report of the ground upon which the disapproval is based, his recommendations with respect thereto, and such additional pertinent data as he may obtain; the Central Office shall make such new statement as is necessary and shall promptly transmit such additional statement, revised or unrevised, to the local

office. Upon receipt of the first statement, or upon receipt of the revised statement herein provided for, the deputy shall make the initial determination, based upon the statement of the Central Office and upon his findings as to the other eligibility requirements, and shall immediately notify the claimant of the initial determination. A copy of such initial determination shall be mailed promptly to interested parties as defined in Regulation B-8 of the Commission.

3. Where the earnings of the claimant as shown by his wage records (Section 3 (c) of the Law) are not sufficient to qualify the claimant for the full weekly benefit amount as provided by Section 3 (b) of the Law, the claimant shall be determined to be eligible to draw as a weekly benefit amount the largest sum per week as a benefit for which his wage credits can qualify him under Section 4 (e) of the Law.

4. When a claim for benefits is filed by a worker, where it appears that such worker was separated from his employment by reason of strike, lockout or other labor dispute, then and in that event, such claims shall be referred immediately to the Commission, together with a full and complete statement by the deputy of the facts with respect to such strike, lockout or other labor dispute. The Commission may, on its own initiative, investigate the facts and circumstances surrounding such strike, lockout or other labor dispute or may request that additional data be obtained and filed. The findings of fact and conclusions of law determined by the Commission relating to the factors set up in Section 5 (d) of the Law, shall be transmitted to the deputy as a decision upon the issues involved affecting the benefit rights of claimant, and others whose essential facts are similar, under said Section 5 (d).

REGULATION B-10

Suitability of Work

Where it appears from the worker's registration card or the claim for benefits filed by a worker that such worker is physically able to work and certifies his availability for work by registering at an employment service office or filing a claim for benefits, such worker shall be held as having failed to apply for available, suitable work, or to accept suitable work if such worker does not accept a referral to a job as a farm worker or agricultural laborer, or other employment determined as suitable by the Commission not precisely identified with his most recent employment.

Regulations on Contributions and Experience Rating

REGULATION C-1

Social Security Account Numbers

1. Each employer shall ascertain the social security account number of each worker employed by him in employment.

2. If an employer has in his employ a worker engaged in employment who does not have such an account number, he shall request the worker to show him a receipt issued by an office of the Social Security Board indicating that the worker has filed an application for an account number. The receipt shall be retained by the worker.

3. If a worker fails to report to his employer his correct account number or to show him a receipt issued by an office of the Social Security Board indicating that he has filed an application for an account number, the employer shall inform the worker that Regulation 106 of the Bureau of Internal Revenue, United States Treasury Department, under the Federal Insurance Contributions Act, provides that:

- (A) Each worker shall report to every employer for whom he is engaged in employment his social security account number and his name exactly as shown on the account number card issued to him by the Social Security Board.
- (B) Each such worker who has not secured an account number shall file an application for an account number on Form SS-5 of the Treasury Department, Bureau of Internal Revenue. The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves the employ of his employer if such date precedes such seventh day.
- (C) If, on the fourteenth day after the date on which the worker first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is the earlier, the worker does not have an account number, and has not shown the employer a receipt issued to the worker by an office of the Social Security Board indicating that he has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement signed by the worker, of

the date of the statement, the worker's full name, present address, date and place of birth, the father's full name, mother's full name before marriage, worker's sex and color or race, and a statement as to whether the worker had previously filed an application on Form SS-5, and, if so, the date and place of such filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of his obligation to make an application on Form SS-5 as set forth in subsection (B) of this section.

4. Each employer shall inform his workers, in instances in which the information is pertinent, that:

- (A) Copies of Form SS-5, "Application for a Social Security Account Number," can be secured at any field office of the Social Security Board, a public employment office which takes claims for unemployment compensation, the local post office, or from any Collector of Internal Revenue and shall be filed with the Social Security Board field office or such public employment office nearest the worker's place of employment, or, if he is not working in the United States, with the Social Security Board office at Baltimore, Maryland.
- (B) Any worker who has lost his account number card may secure a duplicate card by applying at the field office of the Social Security Board nearest his place of employment.
- (C) Any worker may have his account number changed at any time by applying to a field office of the Social Security Board and showing good reason for a change. Any worker whose name is changed by marriage, or otherwise, or who has stated incorrect information on Form SS-5, should report such change or correction to a field office of the Social Security Board. Copies of Form OAAN-7003, "Employee's Request for Change in Records," for making such reports, may be obtained from any field office of the Social Security Board, the central office of the Montana Unemployment Compensation Commission, or a public employment office which takes claims for unemployment compensation.
- (D) Any worker who has more than one account number shall report all numbers to the field office of the Social Security Board nearest his place of employment, or to a public employment office.

5. If a worker fails to comply with the requirements enumerated under Section 3 of this regulation, his employer shall execute a form SS-5, "Application for a Social Security Account Number," or a statement signed by the employer, setting forth

as fully and as clearly as possible the worker's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, and worker's sex and color or race, and a statement as to whether an application for an account number has previously been filed by the worker and, if so, the date and place of such filing.

6. Each employer shall report a worker's account number in making any report required by the Commission with respect to such worker. If the worker has no such number, but has shown his employer a receipt indicating that he has filed application for one, the employer shall, in making any report required by the Commission with respect to such worker, report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt. If the worker fails to show his employer either such number or such receipt the employer shall attach to any report required by the Commission with respect to such worker the statement or Form SS-5, executed in compliance with Section 3 (C) or Section 5 of this regulation.

REGULATION C-2

Posting of Notice to Workers

1. Every employer (including every employing unit which has elected, with the approval of the Commission, to become an employer) shall post and maintain printed notices to his workers informing them that he is liable for contributions under the Montana Unemployment Compensation Law and has been so registered by the Commission. Such notices shall be of such form and design and in such numbers as the Commission may determine to be necessary and shall be posted in conspicuous places near the actual locations where workers' services are performed. No such notice shall be posted by any person or employing unit to whom an unemployment compensation account number has not been assigned by the Commission or who has ceased to be an employer.

REGULATION C-3

Wages Paid

On and after January 1, 1941, wages are "paid" and contributions are due to the fund thereon when actually or constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payments are to be made and must be made available to him so that

they may be drawn at any time, and their payment brought within his own control and disposition.

REGULATION C-4

Regulation on Employment

1. If under Section 19 (j) (2) of the law, an individual's services are covered by the Unemployment Compensation Law of this State on the basis of the performance of some of his work in this State and the location in this State of either (1) his base of operations or place from which his services are directed and controlled, or (2) his residence, such bases of coverage will be presumed to remain unchanged until a permanent change occurs in employment status under (1) or (2) above, or the Commission, upon its own motion or upon written application, finds that such base of operations or place from which his services are directed or controlled, or residence, has been changed to another State or that no part of such individual's services are performed within this State.

Upon making such finding the Commission will notify the interested parties that the services of such individual have ceased to be "employment" subject to the act, as of the first day of the next wage reporting period succeeding the date of receipt by the employer of the notice of such finding..

This regulation shall be applicable only with respect to such circumstances as the Commission deems necessary for the effective administration of this act.

REGULATION C-5

Records and Reports

1. Each employing unit shall preserve existing records with respect to employment performed in its service on and after January 1, 1937, for a period of five years, as hereinafter set forth, and shall establish, maintain and preserve records with respect to workers engaged in employment on and after the effective date of this regulation which shall show:

(A) For Each Pay Period:

- (1) The beginning and ending dates for such pay period;
- (2) The total amount of wages (as defined in Section 19 (p)) for employment in such pay period;
- (3) The number and date of weeks in which there were one or more workers in employment;

(B) For Each Worker:

- (1) His name;
- (2) His Social Security Account Number;

- (3) His wages for each pay period, showing separately:
 - (a) Money wages, including special payments;
 - (b) Reasonable cash value of remuneration by the employer in any medium other than cash (Rule 1);
 - (c) Estimated or actual amount of gratuities received from persons other than employer (Rule 2);
 - (d) Special payments of any kind including annual bonuses, gifts, prizes, etc.;
- (4) The date on which he was hired, rehired, or returned to work after temporary layoff;
- (5) The date when work was terminated by layoff, quit, discharge, or death;
- (6) The cause of any termination;
- (7) If he is on a salary basis, his wage rate and the period covered by such rate;
- (8) If he is paid on a fixed hourly basis, his hourly rate and the customarily scheduled hours per week prevailing in the establishment for his occupation;
- (9) If he is paid on a fixed daily basis, his daily rate and the customarily scheduled days per week prevailing in the establishment for his occupation;
- (10) The method by which his wages are computed (if he is on a piece rate or other variable pay basis);
- (11) An employer shall immediately notify the Commission of the commencement of any receivership or similar proceeding, or of any assignment for the benefit of creditors, and of any order of court under the laws of the State of Montana, with respect to the foregoing. An employer shall immediately notify the Commission of the filing of any voluntary or involuntary petition in bankruptcy or other proceeding under the Federal Bankruptcy Act.

2. Each employer shall report to the Unemployment Compensation Commission of Montana at the time of paying each quarterly contribution, all the information for each pay period covered by the contribution, concerning the number of workers, the total money wages and the total cash value of other remuneration, together with average amount of gratuities, and any other data which is called for on the quarterly summary contribution report form furnished by the Commission, particularly as follows:

- (A) The employer's registration number, name of employer and address at which payroll records are maintained;
- (B) The name and Social Security account number of each worker;
- (C) The total wages (as defined in Section 19 (p)) for employment during pay periods ending within the quarter, showing separately:
 - (1) Money wages;
 - (2) The cash value of other remuneration (Rule 1);
 - (3) Gratuities (Rule 2);
- (D) Any special payments for services rendered other than those rendered exclusively in a given quarter;
- (E) Such other information as may be prescribed on the form.

3. In making quarterly contribution and wage reports under Regulation C-6, the employer shall report for each quarter all wages (as defined in Section 19 (p) of the Law) paid during that quarter, and shall report separately for each worker all wages paid to such worker during such quarter; provided that, if all or any part of such wages are paid for services rendered in a preceding quarter, then the employer shall in such report make separate notation for each worker of the wages paid to him in the current quarter for services rendered in the current quarter and of wages paid in the current quarter but for services rendered in preceding quarters.

4. Each employing unit shall comply with the instructions which are printed upon any report form issued by the Commission or accompanying any report form provided by the Commission and required to be returned to such Commission and which pertain to the preparation and return of any report. Such instructions shall have the force and effect of regulations issued pursuant to Section 11 of the Montana Unemployment Compensation Law.

REGULATION C-6

Contributions and Payment

1. Contributions for the first six months of 1937 shall become due and payable on or before the last day of July, 1937, and contributions for the last six months of 1937, shall become due and payable on or before the last day of January, 1938; beginning January 1, 1938, contributions by employers shall become due and payable quarterly for each calendar quarter, as defined in Section 19 (e) on or before the last day of the month next following the calendar quarter for which contributions have accrued.

2. Each quarterly payment shall include contributions with respect to wages (as defined in Section 19 (p)) for employment for all pay periods ending within the calendar quarter including, on and after January 1, 1941, wages paid within the calendar quarter being reported for all employment occurring on and after January 1, 1941.

3. Contributions are due and payable on all wages payable by each employer with respect to employment occurring within each calendar year up to and including December 31, 1940, and the contribution report for the fourth calendar quarter of 1940 (October, November, December) shall include all wages payable with respect to employment for all pay periods ending within the calendar quarter including all wages payable with respect to subsequent employment occurring up to and including December 31, 1940.

4. Beginning January 1, 1941, contributions shall be due and payable with respect to all wages for employment performed after December 31, 1940, **paid** by each employer during each calendar year. Wages paid with respect to employment occurring within calendar years ending on or before December 31, 1940, which have been previously reported as wages payable, shall not be again reported as wages paid.

5. After wages paid by any employer to any one individual employee, up to and including \$3,000 with respect to employment in any one calendar year, have been reported and contributions thereon paid, all further wages paid to such employee in such calendar year for employment occurring in such calendar year shall be reported on the contribution report and wage records submitted, but the amount of such wages paid exceeding \$3,000 with respect to employment occurring in any one calendar year shall be segregated from the total wages paid for contribution payment purposes.

For example, an employer who employs and pays an individual employee at \$300.00 per month during a calendar year would report contribution as follows:

Period	Wages	Subject to Contribution	Not Subject to Contribution
First quarter, 1941	\$ 900.00	\$ 900.00	\$.....
Second quarter, 1941..	900.00	900.00
Third quarter, 1941	900.00	900.00
Fourth quarter, 1941..	900.00	300.00	600.00
	<hr/>	<hr/>	<hr/>
	\$3,600.00	\$3,000.00	\$ 600.00

An employer who employs and pays an individual employee at \$500.00 per month during a calendar year, would report and pay contributions as follows:

Period	Wages	Subject to Contribution	Not Subject to Contribution
First quarter, 1941.....	\$1,500.00	\$1,500.00	\$.....
Second quarter, 1941..	1,500.00	1,500.00
Third quarter, 1941.....	1,500.00	\$1,500.00
Fourth quarter, 1941....	1,500.00	1,500.00
	<hr/>	<hr/>	<hr/>
	\$6,000.00	\$3,000.00	\$3,000.00

6. The first contribution payment of any employing unit, which becomes an employer at any time during a calendar year, shall become due on and shall be paid on or before the last day of the month next following the calendar quarter in which such employing unit satisfies the conditions with respect to becoming an employer, and shall include contributions with respect to all wages (as defined in Section 19 (p)) paid for employment occurring on and after the first day of the calendar year and up to and including the calendar quarter in which the employing unit satisfies the conditions with respect to becoming an employer except that:

(A) The first contribution payment of any employing unit which elects, with the written approval of such election by the Commission, to become an employer, shall become due on and shall be paid on or before the last day of the month next following the close of the calendar quarter in which the conditions of becoming an employer by election are satisfied and shall include contributions with respect to all wages (as defined in Section 19 (p)) for employment occurring on and after the date stated in such approval (as of which such employing unit becomes an employer), up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

(B) An employing unit, which satisfies the conditions with respect to becoming an employer after June 30 of any calendar year, may, upon application, be authorized to pay its first contribution in installments, provided, however, that no installments shall be postponed beyond the 15th day preceding the last date for filing tax returns under Subchapter C, Section 1604, Internal Revenue Code as amended 1939, and, provided further, that the entire unpaid balance shall be paid upon notice from the Commission if the employer fails to pay any installment when it falls due.

7. Where an employer ceases to do business, sells or transfers the business or the major portion of the assets thereof, or becomes insolvent, or, in any case where the Commission shall deem it necessary, the Commission may demand immediate payment of the contributions due.

8. Every employer subject to the law is required to send in the regular quarterly contribution reports, even though no contributions have accrued with respect to some particular quarter. Employers shall file reports for such periods indicating thereon that no wages have been paid during such period for services performed in employment subject to the act, or indicating therein what wages have been paid during such period as provided thereinbefore, and shall continue to file such reports until an application properly made for termination of coverage as provided for by Section 8 (b) shall have been approved by the Commission.

REGULATION C-7

Because of unforeseen circumstances over which an employer may have no control, such employer may be delayed or prevented from preparing and filing a contribution report within the statutory period, or unable to pay the contributions due before the delinquency date. Therefore, upon application being made, for good cause the Commission may extend time for filing report or paying contributions, and during such extension, penalty and interest shall not accrue.

REGULATION C-8

Experience Rating

1. **"Average annual percentage declines in taxable payrolls for the last three (3) calendar years"** shall be determined as follows:

The Commission shall list each eligible employer's annual payroll for the three yearly periods immediately preceding the computation date in chronological order. For the year 1947 rate determination purposes the quarterly periods used are as follows:—

First Year; Last 2 quarters of 1943 and First 2 quarters of 1944;

Second Year; Last 2 quarters of 1944 and First 2 quarters of 1945;

Third Year; Last 2 quarters of 1945 and First 2 quarters of 1946.

Whenever any annual taxable payroll of any employer is less than the annual taxable payroll for the next preceding year, the annual percentage decline shall be computed to the first decimal place by dividing the amount of the decline by the amount of the annual taxable payroll for such preceding year. The eligible employer's average annual percentage de-

cline shall be the aggregate of the annual percentage declines divided by two.

After determining the amount of such average annual percentage declines applicable to each eligible employer, such employers shall be classified as to such factor for experience rating purposes upon the following point values:

Average Annual Percentage Decline	Point Value Assigned
0.0 (no decline)	10
0.1 or more but less than 5.0.....	9
5.0 or more but less than 10.0.....	8
10.0 or more but less than 15.0.....	7
15.0 or more but less than 20.0.....	6
20.0 or more but less than 25.0.....	5
25.0 or more but less than 30.0.....	4
30.0 or more but less than 35.0.....	3
35.0 or more but less than 40.0.....	2
40.0 or more but less than 45.0.....	1
45.0 or more	0

2. **"Number of years the employer has paid contributions,"** means the total number of years that an employer has been subject as an employer under the Montana Unemployment Compensation law (Section 19 (i)), has reported and paid the contributions due on wages paid for employment as defined in Section 19 (j), and has been chargeable for benefit payments to eligible claimants under Section 6 of the law. An employer shall be considered as having reported and paid contributions due during any calendar quarter wherein he reported no wages paid to employees for employment, so long as his subjectivity as an employer has not been terminated under Section 8 of the law, provided, however, that where an employer has reported "no wages paid for employment" during all four quarters of a calendar year, no credit for such calendar year shall be given in determining the number of years such employer has paid contributions. An employer shall be considered an employer, required to pay contributions on wages and chargeable with benefit payments to eligible claimants, for any "annual taxable pay roll" period wherein he is determined as being a subject employer for one or more quarters in such "annual taxable pay roll" period, and has not terminated his subjectivity as provided for in Section 8 of the law. No employer shall be granted any experience rating classification points under this section of the Regulation unless and until such employer has been an employer (as defined in Section 19 (i)) of the law for five full calendar years prior to the computation date.

Under this factor the Commission shall classify all employers upon the following assigned point values:

Number of Years as Subject Employer	Point Value Assigned
10 years or more	10
9 or more but less than 10.....	8
8 or more but less than 9.....	6
7 or more but less than 8.....	4
6 or more but less than 7.....	2
5 or more but less than 6.....	0

3. **"Chargebacks to the individual employer account upon the last employer basis,"** means that the benefit payments made to an eligible claimant under Section 6 of the law shall be charged back to the employer account of the employer (as defined in Section 19 (i)) in whose employment the claimant last rendered services for wages as defined in Section 19 (p). The Commission shall maintain a separate account for each employer and shall credit such account with all contributions paid by him for employment occurring after June 30th, 1943. Such employer account shall be charged with all benefits paid to eligible claimants whose last employment was rendered in his employ during the 12 consecutive calendar quarter period immediately prior to the computation date. In the event that an employer account shows the total amount of benefits charged to such account during the 12 consecutive calendar quarter period immediately prior to the computation date exceeds the amount of contributions received and credited to said employer account during the same period, no reduction in rate shall be assigned to such employer and such employer shall continue to pay the standard rate of 2.7 per centum. If the total amount of benefits charged to an employer during the 12 consecutive calendar quarter period immediately prior to the computation date is less than the amount of contributions paid by such employer during the same period, the total amount of benefits divided by the total amount of contributions expressed as a percentage and calculated to the first decimal point shall be the basis for the classification of such employer upon the following assigned point values:

Percentage of Benefits to Contributions	Point Value Assigned
0.0 (no chargebacks)	10
0.1 or more but less than 5.0.....	9
5.0 or more but less than 10.0.....	8
10.0 or more but less than 15.0.....	7
15.0 or more but less than 20.0.....	6
20.0 or more but less than 25.0.....	5
25.0 or more but less than 30.0.....	4
30.0 or more but less than 35.0.....	3
35.0 or more but less than 40.0.....	2
40.0 or more but less than 45.0.....	1
45.0 or more	0

4. **"Classification of Employers and Assigning of Rates."** The Commission will assemble and determine the aggregate sum of all classification points applicable to each eligible employer and list such employers in numerical order beginning with the employer having the highest number of such classification points. Such schedule will determine the proper position of each eligible employer in the array. In order to comply with the provisions of Section 7 (C) Chapter 245 Session Laws of Montana, 1945, those employers whose records show that no reduction in rates are assignable shall first be determined, together with the amount of pay rolls represented by said Group. The array of eligible employers as above set forth will then be assigned the following grouping as to pay rolls and assignment of classification points as determining the rates to be paid for the year 1947:

Group	Point Value Assigned	Tax Rate
I	30	1.0%
II	29 to 24.....	1.5%
III	23 to 19.....	2.0%
IV	18 to 1	2.5%
V	Fixed by Law.....	2.7%

5. **"Notice of Rate of Contribution to Employers."** The Commission shall notify all employers as soon as possible after January 1st of each year of the Group and Rate assigned to each employer as determined by Paragraph 4 of this Regulation. Said notice shall be sent by regular mail addressed to the last known post office address of each such employer as the same appears on the Commission records. The Group and Rate of contribution thus assigned will apply to such employer during the entire calendar year, unless the employer files a written request (Form U. C. 46) with the Commission for a re-determination of such classification within thirty (30) days after the date of mailing of such notice. Upon receipt of such written request for hearing (Form U. C. 46) the procedures provided for in Regulation A-5 shall apply for all hearings arising under the rate determination section of the law. Each employer will be required to use the Group and Rate of Contribution classification made to such employer in sending in the Contribution reports and paying the amounts due thereunder, as provided for in Regulation C-6.
6. **"Transfer of Employer Accounts, Rights, Contributions and Benefit Experience and Rating to a Successor."** Whenever any employing unit in any manner succeeds to, or has succeeded to, or acquires, or has acquired, the organization, trade, separate establishment, or business, or substantially all the assets thereof (whether or not the successor was

prior to such acquisition an employing unit as defined in Section 19) of another which at the time of such acquisition was an employer subject to the law, and such predecessor employing unit has executed and filed with the Commission a statement relinquishing all rights to have its prior pay roll records used for the purpose of determining variations in rates of employer contributions for such predecessor, and requesting the Commission to use such prior pay roll records and contributions paid for the purpose of determining the variations in rates of contributions for such successor, such successor shall, if not already an employer on the date of such acquisition and for the purpose of determining the variations in rate of contributions, be considered by the Commission in the position of the predecessor with respect to pay roll records thus involved. If the successor is an employer prior to the time of transfer it shall continue to pay the employer contributions at the rate applicable to it from the date of the transfer until the end of the current tax year. If the successor is not an employer prior to the time of the transfer, it shall pay the employer contribution rate applicable to the predecessor, or, if more than one rate is applicable to both, at the highest of such rates. If the successor is not an employer prior to the time of the transfer, and simultaneously acquires the businesses of two or more employers to whom different rates of employer contributions are applicable, such successor shall pay employer contributions at the highest rate applicable to such predecessors from the date of the transfers until the end of the then current taxable year. In all cases the rate of employer contributions applicable to such successor for each tax year beginning with the tax year commencing next after the transfer shall be computed on the basis of combined pay roll records of the successor and predecessor or predecessors. A successor shall be deemed to be an eligible employer if its experience, combined with that of its predecessor meets the requirements of the law for computation of variations in rates. As used in this sub-paragraph, "Successor" means the employing unit to whom a transfer is made, and "Predecessor" means the employing unit making the transfer, and may, if the context so requires, be construed as referring only to the separate establishments transferred in case of a transfer of separate establishment.

SERVICEMEN'S READJUSTMENT ACT

(Federal)

Affecting Unemployment Compensation

TITLE V

READJUSTMENT ALLOWANCES FOR FORMER MEMBERS OF THE ARMED FORCES WHO ARE UNEMPLOYED

Chapter VII—Readjustment Allowances for Former Members of the Armed Forces Who Are Unemployed

Section 700. (a) Any person who shall have served in the active military or naval service of the United States at any time after September 16, 1940, and prior to the termination of the present war, and who shall have been discharged or released from active service under conditions other than dishonorable, after active service of ninety days or more, or by reason of an injury or disability incurred in service in line of duty, shall be entitled, in accordance with the provisions of this title and regulations issued by the Administrator of Veterans' Affairs pursuant thereto, to receive a readjustment allowance as provided herein for each week of unemployment, not to exceed a total of fifty-two weeks, which (1) begins after the first Sunday of the third calendar month after the date of enactment hereof, and (2) occurs not later than two years after discharge or release or the termination of the war, whichever is the later date: **Provided,** That no such allowance shall be paid for any period for which he receives increased pension under part VII of Veterans Regulation 1 (a) or a subsistence allowance under part VIII of such regulation: **Provided further,** That no readjustment allowance shall be payable for any week commencing more than five years after the termination of hostilities in the present war.

(b) Such person shall be deemed eligible to receive an allowance for any week of unemployment if claim is made for such allowance and the Administrator finds with respect to such week that—

(1) the person is residing in the United States at the time of such claim;

(2) the person is completely unemployed, having performed no service and received no wages, or is partially unemployed in that services have been performed for less than a full workweek and the wages for the week are less than the allowance under this title plus \$3;

(3) the person is registered with and continues to report to a public employment office, in accordance with its regulations;

(4) the person is able to work and available for suitable work: **Provided**, That no claimant shall be considered ineligible in any period of continuous unemployment for failure to comply with the provisions of this subparagraph if such failure is due to an illness or disability which occurs after the commencement of such period.

(c) For the purposes of this title, neither the present war nor hostilities therein shall be considered as terminating, in the case of any individual, before the termination of such individual's first period of enlistment or reenlistment contracted within one year after the date of the enactment of the Armed Forces Voluntary Recruitment Act of 1945.

CHAPTER VIII

DISQUALIFICATION

Section 800. (a) Notwithstanding the provisions of section 700, a claimant shall be disqualified from receiving an allowance if—

(1) he leaves suitable work voluntarily, without good cause, or is suspended or discharged for misconduct in the course of employment;

(2) he, without good cause, fails to apply for suitable work to which he has been referred by a public employment office, or to accept suitable work when offered him; or

(3) he, without good cause, does not attend an available free training course as required by regulations issued pursuant to the provisions of this title.

(b) Notwithstanding the provisions of section 700, a claimant shall also be disqualified from receiving an allowance for any week with respect to which it is found that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: **Provided**, That this subsection shall not apply if it is shown that—

(1) he is not participating in or directly interested in the labor dispute which causes the stoppage of work; and

(2) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute: **Provided, however**, That if in any case separate branches of work, which are commonly conducted as separate business in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this sub-

section, be deemed to be a separate factory, establishment, or other premises.

(c) (1) If a claimant is disqualified under the provisions of subsection (a) of this section, he shall be disqualified to receive an readjustment allowance for the week in which the cause of his disqualification occurred and for not more than four immediately following weeks.

(2) In addition to the disqualification prescribed in paragraph (1) above, the Administrator may, in cases of successive disqualifications under the provisions of subsection (a) of this section, extend the period of disqualification for such additional period as the Administrator may prescribe, but not to exceed eight additional weeks in the case of any one disqualification.

(d) (1) In determining under subsection (a) of this section the suitability of work or the existence of good cause with respect to a claimant, the conditions and standards prescribed by the unemployment compensation laws of the State in which he files his claim shall govern: **Provided**, That the Administrator may prescribe conditions and standards for applicants in any State having no applicable statute.

(2) In determining under subsection (a) of this section the suitability of work, no work shall be deemed suitable for an individual if—

(A) the position offered is vacant due directly to a strike, lock-out, or other labor dispute; or

(B) the wages, hours, or other conditions of the work offered are substantially less favorable to him than those prevailing for similar work in the locality.

CHAPTER IX

AMOUNT OF ALLOWANCE AND PAYMENT

Section 900. (a) The allowance for a week shall be \$20 less that part of the wages payable to him for such week which is in excess of \$3: **Provided**, That where the allowance is not a multiple of \$1, it shall be computed to the next highest multiple of \$1.

(b) The number of weeks of allowances to which each eligible veteran shall be entitled shall be determined as follows: For each calendar month or major fraction thereof of active service during the period stated in section 700 the veteran shall be entitled to four weeks of allowances, but in no event to exceed the maximum provided in section 700: **Provided**, That the allowance for the qualifying ninety days service shall be eight weeks for each such month.

Section 901. (a) Readjustment allowances shall be paid at the intervals prescribed by the unemployment compensation law

of the State in which the claim was made: **Provided,** That if none are so prescribed readjustment allowances shall be paid at such reasonable intervals as may be determined by the Administrator.

(b) Any allowances remaining unpaid upon the death of a claimant shall not be considered a part of the assets of the estate of the claimant, or liable for the payment of his debts, or subject to any administration of his estate, and the Administrator may make payment thereof to such person or persons he finds most equitably entitled thereto.

Section 902. (a) Any person qualified under subsection (a) of section 700, and residing in the United States who is self-employed for profit in an independent establishment, trade, business, profession, or other vocation shall be eligible for readjustment allowances under this title within the time periods applicable, and not in excess of the total amount provided in this title.

(b) Upon application by the veteran showing, in accordance with rules prescribed by the Administrator, that he has been fully engaged in such self-employment and that his net earnings in a trade, business, profession, or vocation, have been less than \$100 in the previous calendar month, the veteran shall be entitled to receive, subject to the limitations of this title as to time and amount, the difference (adjusted to the next highest multiple of \$1), between \$100 and his net earnings for such month.

(c) Payment of such allowance shall be made by the Administrator to each eligible veteran at the time and in the manner other payments are made directly to veterans by the Administrator.

(d) Subsection (b) of section 700 and section 800 shall not apply in determining the eligibility for allowances of a claimant under this section.

CHAPTER X

ADJUSTMENT OF DUPLICATE BENEFITS

Section 1000. Where an allowance is payable to a claimant under this title and where, for the same period, either an allowance or benefit is received under any Federal or State unemployment or disability compensation law, the amount received or accrued from such other source shall be subtracted from the allowance payable under this title (except that this section shall not apply to pension, compensation, or retired pay paid by the Veterans' Administration); and the resulting allowances, if not a multiple of \$1, shall be readjusted to the next higher multiple of \$1.

CHAPTER XI

ADMINISTRATION

Section 1100. (a) The Administrator of Veterans' Affairs is authorized to administer this title and shall, insofar as possible, utilize existing facilities and services of Federal and State departments or agencies on the basis of mutual agreements with such departments or agencies. Such agreements shall provide for the filing of claims for readjustment allowances with the Administrator through established public employment offices and State unemployment-compensation agencies. Such agencies, through agreement, shall also be utilized in the processing, adjustment, and determination of such claims and the payment of such allowances. To facilitate the carrying out of agreements with State departments or agencies and to assist in the discharge of the Administrator's duties under this title, a representative of the Administrator, who shall be a war veteran separated from active service under honorable conditions and who at the time of appointment shall have been a bona fide resident of the State for at least two years, shall be located in each participating State department or agency.

(b) The Administrator, consistent with the provisions of this title, shall prescribe such rules and regulations and require such records and reports as he may find necessary to carry out its purposes: **Provided, however,** That cooperative rules and regulations relating to the performance by Federal or State departments, or agencies, of functions under agreements made therewith may be made by the Administrator after consultation and advisement with representatives of such departments or agencies.

(c) The Administrator may delegate to any officer or employee of his own or of any cooperating department or agency of any State such of his powers and duties, except that of prescribing rules and regulations, as the Administrator may consider necessary and proper to carry out the purposes of this title.

(d) Allowances paid by the cooperating State agencies shall be repaid upon certification by the Administrator. The Secretary of the Treasury, through the Division of Disbursement of the Treasury, and without the necessity of audit and settlement by the General Accounting Office, shall pay monthly to the departments, agencies, or individuals designated, the amounts so certified.

(e) The Administrator shall from time to time certify to the Secretary of the Treasury for payments in advance or otherwise such sums as he estimates to be necessary to compensate any Federal department or agency for its administrative expenses under this title. Such sums shall cover periods of no longer than six months.

(f) The Administrator shall also from time to time certify to the Social Security Board such State departments or agencies as

may be participating in the administration of this title, and the amount of the administrative expense incurred or to be incurred by a State under agreements made pursuant to this section. Upon such certification the Social Security Board shall certify such amount to the Secretary of the Treasury, in addition to the amount, if any, payable by said Board under the provisions of section 302 (a) of the Social Security Act, as amended, and the additional amount so certified shall be paid to each State by the Secretary of the Treasury out of the appropriation for the Veterans' Administration.

(g) Any money paid to any cooperating agency or person, which is not used for the purpose for which it was paid shall, upon termination of the period covered by such payment or the agreement with such agency or person, be returned to the Treasury and credited to the current appropriation for carrying out the purpose of this title, or, if returned after the expiration of period covered by this title, shall be covered into the Treasury as miscellaneous receipts.

Section 1101. (a) No person designated by the Administrator as a certifying officer shall, in the absence of gross negligence, or intent to defraud the United States, be liable with respect to the payment of any allowance certified by him under this title.

(b) No disbursing officer shall, in the absence of gross negligence, or intent to defraud the United States, be liable with respect to any payment by him under this title if it was based upon a voucher signed by a certifying officer designated by the Administrator.

Section 1102. Any claimant whose claim for an allowance has been denied shall be entitled to a fair hearing before an impartial tribunal of the State agency or such other agency as may be designated by the Administrator. The representative of the Administrator located in each State shall be the final appellate authority in regard to contested claims arising in such State, subject to review by the Administrator.

Section 1103. In the case of any veteran eligible under the provisions of this title who either at the time of application for the benefits herein provided is a "qualified employee" as defined in section 3 of the Railroad Unemployment Insurance Act, as amended, or was last employed prior to such application by an employer as defined in section 1 (a) of the said Act, claim may be made through an office operated by or a facility designated as a free employment office by the Railroad Retirement Board pursuant to the provisions of said Act. In such cases, the conditions and standards as to suitability of work or existence of good cause, the intervals for making claim for and payment of benefits, and the administrative and appellate procedures prescribed by or under said Act shall govern, if not in conflict with the provisions of this title, the appellate procedures being subject to final appeal to the Administrator. In such cases, a reference in this title to a co-

operating State agency shall be deemed to include the Railroad Retirement Board.

CHAPTER XII

DECISIONS AND PROCEDURES

Section 1200. The authority to issue subpoenas and provisions for invoking aid of the courts of the United States in case of disobedience thereto, to make investigations, and to administer oaths, as contained in title III of the Act of June 29, 1936 (49 Stat. 2033-34; U. S. C., title 38, secs. 131-133), shall be applicable in the administration of this title.

CHAPTER XIII

Section 1300. Any claimant who knowingly accepts an allowance to which he is not entitled shall be ineligible to receive any further allowance under this title.

Section 1301. (a) Whoever, for the purpose of causing an increase in any allowance authorized under this title, or for the purpose of causing any allowance to be paid where none is authorized under this title, shall make or cause to be made any false statement or representation as to any wages paid or received, or whoever makes or causes to be made any false statement of a material fact in any claim for any allowance under this title, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such claim, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(b) Whoever shall obtain or receive any money, check, or allowance under this title, without being entitled thereto and with intent to defraud the United States, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both.

CHAPTER XIV

Section 1400. As used in this title—

(a) The term "week" means such period or periods of seven consecutive calendar days as may be prescribed in regulations by the Administrator.

(b) The term "wages" means all remuneration for services from whatever sources, including commissions and bonuses and the cash value of all remuneration in any medium other than cash.

SOCIAL SECURITY LAWS

(Federal)

Affecting Unemployment Compensation

TITLE III

GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

Appropriation

Section 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of \$4,000,000, for each fiscal year thereafter up to and including the fiscal year ending June 30, 1938, the sum of \$49,000,000, and for the fiscal year ending June 30, 1939, and for each fiscal year thereafter, the sum of \$80,000,000, to be used as hereinafter provided.

Payments to States

Section 302. (a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under the Federal Unemployment Tax Act, such amounts as the Board determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws

Section 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State approved by the Board under the Federal Unemployment Tax Act, includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Board shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 1606 (b) of the Federal Unemployment Tax Act), immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606 (b) of the Federal Unemployment Tax Act; provided, that an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such report; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Board for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Board for the proper administration of such State law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied, it shall make no further certification to the Secretary of the Treasury with respect to such State .

(c) The Board shall make no certification for payment to any State if it finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) That such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes; or

(2) That such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

TITLE IX

TAX ON EMPLOYERS OF EIGHT OR MORE

[Note.—The provisions of this title, except section 904, are now contained in and are superseded by subchapter C of chapter 9 of the Internal Revenue Code.]

Unemployment Trust Fund

Section 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund," hereinafter in this title called the "Fund." The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the

Railroad Retirement Board to the credit of the railroad unemployment insurance account, **or deposited pursuant to appropriations to the Federal unemployment account.** Such deposit may be made directly with the Secretary of the Treasury or with any Federal Reserve bank or member bank of the Federal Reserve system designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, **the Federal unemployment account,** and the railroad unemployment insurance account and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the

account of such State agency at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the fund as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the railroad unemployment insurance account at the time of such payment.

(g) The Secretary of the Treasury is authorized and directed, prior to audit or settlement by the General Accounting Office, to make transfers from the Federal unemployment account to the account of any State in the Unemployment Trust Fund in accordance with certification made by the Board pursuant to section 1201, not exceeding the amount on deposit in the Federal unemployment account at the time of such transfer.

(h) There is hereby established in the Unemployment Trust Fund a Federal unemployment account. There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to the excess of taxes collected prior to July 1, 1943, under title IX of this Act and under the Federal Unemployment Tax Act, over the total unemployment administrative expenditures made prior to July 1, 1943; and there is hereby authorized to be appropriated to such account for the fiscal year 1945 and for each fiscal year thereafter (1) a sum equal to any excess of taxes collected in the preceding fiscal year under the Federal Unemployment Tax Act over the unemployment administrative expenditures made in such year, and (2) such further sums, if any, as may be necessary to carry out the purposes of title XII. Any amounts in the Federal unemployment account on October 1, 1947, and any amounts repaid to such account after such date, shall be covered into the general fund of the Treasury. As used in this subsection, the term "unemployment administrative expenditures" means expenditures for grants under title III of this Act, for the administration of that title by the Board, and for the administration of title IX of this Act and of the Federal Unemployment Tax Act by the Department of the Treasury and the Board. For the purposes of this subsection there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of \$40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (50 Stat. 754).

INTERNAL REVENUE CODE

Federal

SUBCHAPTER "C"—FEDERAL UNEMPLOYMENT TAX ON EMPLOYERS OF EIGHT OR MORE

SECTION 1600. RATE OF TAX.

Every employer (as defined in section 1607 (a)) shall pay for the calendar year 1939 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607 (b)) paid by him during the calendar year with respect to employment (as defined in section 1607 (c)) after December 31, 1938.

SECTION 1601. CREDITS AGAINST TAX.

(a) Contributions to State Unemployment Funds.

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 1600 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified for the taxable year as provided in section 1603.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 1604 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for pur-

poses of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 1604.

(b) Additional Credit. In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 1600 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 1602 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a rate of 2.7 per centum, whichever rate is lower.

(c) Limit on Total Credits. The total credits allowed to a taxpayer under this subchapter shall not exceed 90 per centum of the tax against which such credits are allowable.

(d) Refund or Credit. Refund or credit of the tax (including penalty and interest collected with respect thereto, if any), based on any credit allowable under this section, may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such credit or refund.

SECTION 1602. CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE.

(a) State Standards. A taxpayer shall be allowed an additional credit under section 1601 (b) with respect to any reduced rate of contributions permitted by a State law, only if the Board finds that under such law—

(1) No reduced rate of contributions to a pooled fund or to a partially pooled account, is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the three consecutive years immediately preceding the computation date;

(2) No reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless (A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and (B) the balance of such account amounts to not less than 2½ per centum of that part of the payroll or payrolls for the three years preceding the computation date by which contributions to such account

were measured; and (C) such contributions were payable to such account with respect to three years preceding the computation date;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such account amounts to not less than 7½ per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(4) Effective January 1, 1942, paragraph (3) of this subsection is amended to read as follows:

“(3) No reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless (A) compensation has been payable from such account throughout the year preceding the computation date, and (B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three years preceding such date, and (C) the balance of such account amounts to not less than 2½ per centum of that part of the payroll or payrolls for the three years preceding such date by which contributions to such account were measured, and (D) such contributions were payable to such account with respect to the three years preceding the computation date.”

(b) Certification by the Board with Respect to Additional Credit Allowance—

(1) On December 31 in each taxable year, the Board shall certify to the Secretary of the Treasury the law of each State (certified with respect to such year by the Board as provided in section 1603) with respect to which it finds that reduced rates of contributions were allowable with respect to such taxable year only in accordance with the provisions of subsection (a) of this section.

(2) If the Board finds that under the law of a single State (certified by the Board as provided in section 1603) more than one type of fund or amount is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any taxable year, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a) of this section, the Board shall, on December 31 of such taxable year, certify to the Secretary of the Treasury only those provisions of the State law pursuant to which

reduced rates of contributions were allowable with respect to such taxable year under conditions fulfilling the requirements of subsection (a) of this section, and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c) of this section, established by the provisions so certified. If the Board finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Board shall make such certifications pursuant to this paragraph as it finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a) of this section.

(3) The Board shall, within thirty days after any State law is submitted to it for such purpose, certify to the State agency its findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c) of this section, which are allowable under such State law only in accordance with the provisions of subsection (a) of this section. After making such findings, the Board shall not withhold its certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any taxable year pursuant to paragraph (1) or (2) of this subsection unless, after reasonable notice and opportunity for hearing to the State agency, the Board finds the State law no longer contains the provisions specified in subsection (a) of this section or the State has, with respect to such taxable year, failed to comply substantially with any such provision.

(c) Definitions. As used in this section—

(1) Reserve Account. The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) Pooled Fund. The term "pooled fund" means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) Partially Pooled Account. The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided,

and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4) of this subsection.

(4) Guaranteed Employment Account. The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least thirty hours of work for which remuneration will be paid at not less than stated rates, for each of forty weeks (or if more, one weekly hour may be deducted for each additional week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the eleven or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) Year. The term "year" means any twelve consecutive calendar months.

(6) Balance. The term "balance," with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) Computation Date. The term "computation date" means the date, occurring at least once in each calendar year and

within twenty-seven weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) **Reduced Rate.** The term "reduced rate means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

SECTION 1603. APPROVAL OF STATE LAWS.

(a) **Requirements.** The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 1606 (b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act;

(4) All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606 (b): **Provided,** That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject

to the power of the legislature to amend or repeal such law at any time.

(b) Notification. The Board shall, upon approving such law, notify the Governor of the State of its approval.

(c) Certification. On December 31 of each taxable year the Board shall certify to the Secretary each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(d) Notice of Non-Certification. If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (c), it shall promptly so notify the Governor of such State.

SECTION 1604. RETURNS.

(a) Requirement. Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this subchapter for such taxable year. Each such return shall be made under oath, shall be filed with the collector for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) Extension of Time for Filing. The Commissioner may extend the time for filing the return of the tax imposed by this subchapter, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than ninety days.

(c) Publicity. Returns filed under this subchapter shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under chapter 1, except that paragraph (2) of subsections (a), (b), and (f) of section 55 shall not apply.

SECTION 1605. PAYMENT OF TAXES.

(a) Administration. The tax imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury as internal revenue collections.

(b) Addition to Tax in Case of Delinquency. If the tax is not paid when due, there shall be added as part of the tax in-

terest at the rate of 6 per centum per annum from the date the tax became due until paid.

(c) Installment Payments. The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(d) Extension of Time for Payment. At the request of the tax payer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(e) Fractional Parts of a Cent. In the payment of any tax under this subchapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

SECTION 1606. INTERSTATE COMMERCE AND FEDERAL INSTRUMENTALITIES.

(a) No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) The legislature of any State may require any instrumentality of the United States (except such as are (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Board under section 1603 and (except as provided in section 5240 of the Revised Statutes, as amended, and as modified by subsection (c) of this section) to comply otherwise with such law. The permission granted in this subsection shall apply (1) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uni-

form upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk, and (2) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event said State is not certified by the Board under section 1603 with respect to such year.

(c) Nothing contained in section 5240 of the Revised Statutes, as amended, shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

SECTION 1607. DEFINITIONS.

When used in this subchapter—

(a) **Employer.**—The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) **Wages.**—The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon employee under section 1400 or (B) of any payment required from an employee under a State unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make.

(c) Employment.—The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—

(1) Agricultural labor (as defined in subsection (1));

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1600;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act;

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—

(i) the remuneration for such service does not exceed \$45, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1);

(C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed \$45 (exclusive of room, board, and tuition);

(1.1) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(14) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission; or

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(d) Included and Excluded Service.—If the services performed during one-half of more of any pay period by an employee

for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (c).

(e) State Agency.—The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) Unemployment Fund.—The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended, shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606 (b): **Provided,** That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration.

(g) Contributions.—The term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) Compensation.—The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) Employee.—The term "employee" includes an officer of a corporation.

(j) **State.**—The term "State" includes Alaska, Hawaii, and the District of Columbia.

(k) **Person.**—The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(l) **Agricultural Labor.**—The term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

SECTION 1608. DEDUCTIONS AS CONSTRUCTIVE PAYMENTS.

Whenever under this subchapter or any Act of Congress, or under the law of any State, an employer is required or permitted

to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this subchapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

SECTION 1609. RULES AND REGULATIONS.

The Secretary and the Social Security Board, respectively, shall make and publish such rules and regulations, not inconsistent with this subchapter, as may be necessary to the efficient administration of the functions with which each is charged under this subchapter. The Commissioner, with the approval of the Secretary, shall make and publish rules and regulations for the enforcement of this subchapter, except sections 1602 and 1603.

SECTION 1610. OTHER LAWS APPLICABLE.

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter.

SECTION 1611. SHORT TITLE.

This subchapter may be cited as the "Federal Unemployment Tax Act."

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